

No 24 of 2008

***Konebada Petroleum Park Authority Act 2008.***

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No. of 2009.

*Konebada Petroleum Park Authority Act 2008,*

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No. of 2008.

AN ACT

entitled

***Konebada Petroleum Park Authority Act 2008,***

Being an Act to provide for the establishment of the Konebada Petroleum Park Authority and to define its powers and functions, and for related purposes,

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

**PART I. – PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts the exercise of a right or freedom referred to in Subdivision III.3.C. (*qualified rights*) of the *Constitution*, namely –

- (a) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (b) the right to freedom of expression and publication conferred by Section 46; and
- (c) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48; and
- (d) the right to reasonable privacy conferred by Section 49; and
- (e) the right of reasonable access to official documents conferred by Section 51; and
- (f) the right of freedom of movement conferred by Section 52,

of the *Constitution*, is a law that is made (pursuant to Section 38 of the *Constitution*), taking account of the National Goals and Directive Principles and the Basic Social Obligations, in particular the National Goals and Directive Principles entitled –

- (i) national sovereignty and self reliance; and
- (ii) natural resources and environment,

for the purpose of giving effect to the public interest in public order and public welfare.

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(2) For the avoidance of doubt, and for the purposes of Section 41(2) of the *Organic Law on Provincial Governments and Local-level Government*, it is declared that this Act relates to matters of national interest.

### 2. OBJECTS OF ACT.

The objects of this Act are to –

- (a) provide an appropriately managed and serviced industrial precinct for the establishment and operation of large scale greenfields petroleum processing and energy projects which add value to the petroleum resources of Papua New Guinea and elsewhere; and
- (b) promote and develop downstream processing and export industries which will contribute to national economic growth and development; and
- (c) enable land to be used for commercial activities; and
- (d) create employment opportunities in skilled and unskilled occupations and to foster, in partnership between the government and industry, the establishment of training facilities; and
- (e) ensure that petroleum processing is achieved in accordance with best industrial, social and environmental practice; and
- (f) enable the Authority to become financially self sufficient by operating on a full cost recovery basis.

### 3. INTERPRETATION.

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

"Authority" means the Konebada Petroleum Park Authority established by Section 5;

"authority subsidiary" means a company incorporated under the *Companies Act 1997* more than half of the shares in which are held legally or beneficially by the Authority or another authority subsidiary;

"Board" means the Konebada Petroleum Park Authority Board established by Section 9;

"Chairman" means the Chairman of the Board for the time being appointed under Section 14;

"Chief Executive Officer" means the chief executive officer appointed under Section 24;

"Commissioner General" means the Commissioner General of Internal Revenue Commission appointed under the *Income Tax Act 1958*;

"Deputy Chairman" means the Deputy Chairman of the Board for the time being appointed under Section 14;

"Duty Law" means-

- (a) the *Customs Act* (Chapter 101); or
- (b) the *Excise Act* (Chapter 105); or
- (c) the *Customs Tariff Act 1990*; or
- (d) the *Excise Tariff Act* (Chapter 102);

"enterprise" means a person or corporation carrying on, or preparing to carry on, business in the Park;



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"feedstock levy" means the levy referred to in Section 43;

"Government land" means land other than –

- (a) customary land that is not leased by the owners to the State; and
- (b) land held by a person other than the State for an estate greater than a term of years; and
- (c) land which is the subject of an existing State lease under the **Land Act 1996**,

and includes land reserved, or deemed to have been reserved, from lease under Section 49 of the **Land Act 1996**, whether or not that land has been placed, or is deemed to have been placed, under the control of trustees under Section 50 of that Act;

"Hiri Village" means the villages (and adjoining areas) of Roku, Kouderika, Porebada, Boera, Papa and Lealea in Central Province;

"land" includes the offshore area and the bed of any river, stream, estuary, lake or swamp;

"marine facilities" means facilities for –

- (a) berthing, loading, unloading and servicing ships in the Park; and
- (b) transporting and storing petroleum, processed petroleum, by products and other cargo;

"Minister" means the minister responsible for petroleum matters;

"Motu Koitabu" means peoples of the traditional Motu Koitabu clans;

"National Capital District" means the district established by Section 4 (*National Capital District*) of the **Constitution**, the boundaries of which are described in the **Organic Law on the Boundaries of the National Capital District**;

"offshore area" means the area that comprises –

- (a) the seabed underlying the waters (if any) between the low water line and the baseline; and
- (b) the seabed underlying the territorial sea; and
- (c) the seabed adjacent to the coast of Papua New Guinea that underlies the offshore seas to a depth not exceeding 200 m or, beyond that limit, to a depth where the superjacent waters admit of the exploitation of the natural resources in the subsurface or on the seabed of that area;

"Park" means the area of land in Central Province and the National Capital District together with any adjacent offshore area to be known as the Konebada Petroleum Park as defined in Section 3(4);

"petroleum" has the meaning given in the **Oil and Gas Act 1998**;

"Petroleum Advisory Board" means the board established under Section 13 of the **Oil and Gas Act 1998**.

"petroleum processing facility" has the meaning given in the **Oil and Gas Act 1998**;

"Petroleum Advisory Board" means the board established under Section 13 of the **Oil and Gas Act 1998**;

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"Petroleum processing facility" has the meaning given in the *Oil and Gas Act 1998*;

"petroleum product" has the meaning given in the *Oil and Gas Act 1998*;

"principal customs area" means any part of Papua New Guinea other than the Park;

"private land" means land other than Government land;

"processed petroleum" has the meaning given in the *Oil and Gas Act 1998*;

"Secretary" means the Secretary of the Board appointed under Section 22.

(2) References in this Act to the Authority include where the context requires, each authority subsidiary.

(3) A reference in this Act to any other Act includes –

(a) any regulations made under that other Act; and

(b) any Act that is substituted for or that replaces that other Act; and

(c) any regulations made under any such substitute or replacement Act.

(4) The area of the Park shall be as defined by notice published by the Minister responsible for Lands and Physical Planning matters in the National Gazette from time to time.

#### **4. ACT BINDS THE STATE.**

(1) This Act binds the State.

(2) Where, by or under any other Act, the Head of State, acting on advice of a Minister or the National Executive Council, may give directions as to policy, any directions as to policy given to the Authority under this section may not be inconsistent with the provisions of this Act or the *Oil and Gas Act 1998*.

### **PART II. – THE KONEBADA PETROLEUM PARK AUTHORITY.**

#### *Division 1. – Incorporation.*

#### **5. ESTABLISHMENT OF THE KONEBADA PETROLEUM PARK AUTHORITY.**

(1) The Konebada Petroleum Park Authority is hereby established.

(2) The Authority –

(a) is a body corporate with perpetual succession; and

(b) shall have a common seal; and

(c) may acquire, hold and dispose of property; and

(d) may sue and be sued in its corporate name and style.

(3) The common seal of the Authority may not be affixed to any document or instrument except pursuant to a resolution of the Board.

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(4) The affixation of the common seal of the Authority is to be attested by any two members of the Board.

(5) All courts, Judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall presume that it was properly affixed.

### **6. FUNCTIONS OF THE AUTHORITY.**

Without limiting the generality of functions of the Authority prescribed by this Act or any other law, the functions of the Authority are to -

- (a) facilitate, regulate and manage the Park; and
- (b) as prescribed, determine the scope of activities permitted in the Park and eligibility to qualify for concessions applicable to downstream processing of petroleum; and
- (c) procure or supply services and infrastructure for enterprises in the Park, and to levy charges for doing so; and
- (d) coordinate and facilitate access to land and marine facilities in the Park; and
- (e) to acquire Government and private land in the Park; and
- (f) acquire, coordinate, facilitate and manage marine facilities in the Park; and
- (g) act as the regulator of infrastructure in the Park, including planning, building and utilities; and
- (h) co-ordinate regulation of activities within the Park with other government agencies as the primary or first point of contact for developers at the Park; and
- (i) hold and manage land for the use by the Authority and enterprises at the Park, and to collect rent for the use of land; and
- (j) employ staff and engage consultants and advisers; and
- (k) manage relations with customary landowners, including business development, social and health programs; and
- (l) undertake development of facilities and services in the Park; and
- (m) maintain on an ongoing basis disaster management plans for the Park, including liaison and co-ordination with other relevant agencies; and
- (n) to impose levies and charges as provided for in this Act; and
- (o) undertake environmental monitoring of activities in the Park and its surroundings in co-operation with Enterprises in the Park and other government agencies; and
- (p) undertake the activities contemplated in Part III of this Act; and
- (q) to carry out such other functions as are given to the Authority by this Act or by any other law; and
- (r) generally to do such supplementary, incidental, or consequential acts and things as are necessary or convenient for the Authority to carry out its functions.

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### **7. POWERS OF THE AUTHORITY.**

The Authority has, in addition to the powers otherwise conferred on it by this Act and any other law, power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

### **8. AUTHORITY SUBSIDIARY.**

(1) The Authority may, subject to prior approval of the Minister responsible for finance matters, incorporate one or more authority subsidiaries, which shall have all the powers of a company under the *Companies Act 1997*.

(2) The Board may determine the composition of the Board of Directors of an authority subsidiary.

### *Division 2. – Konebada Petroleum Park Authority Board.*

### **9. KONEBADA PETROLEUM PARK AUTHORITY BOARD.**

(1) There is established a board for the Authority to be called the Konebada Petroleum Park Authority Board.

(2) Subject to Subsection (4), the Board is to perform the functions, exercise the powers and manage and direct the administrative affairs of the Authority.

(3) The Minister may, after consultation with, and acting on the advice and recommendation of, the Petroleum Advisory Board, give to the Board general or specific directions as to petroleum policy.

(4) In the exercise of its functions under this Act, the Board shall act in accordance with, and shall give effect to, any general or specific directions as to policy given to it from time to time by the Minister under Subsection (3).

(5) Any direction as to policy given by the Minister under Subsection (3) or any other Act the administration of which is the responsibility of the Authority from time to time.

### **10. MEMBERSHIP OF THE BOARD.**

(1) Subject to Subsection (2), the Board shall consist of the following -

- (a) one nominee of the Minister who must be of Motu Koitabu descent and ordinarily resident in a Hiri village; and
- (b) one nominee of the Minister ordinarily resident in Central Province (but not in a Hiri village); and
- (c) the Administrator of Central Province, *ex officio*; and
- (d) the City Manager of the National Capital District Commission, *ex officio*; and
- (e) the Chief Executive Officer, *ex officio*; and

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- (f) the Departmental Head of the Department responsible for treasury matters, or his nominee who must occupy a position in the National Public Service of a level no lower than First Assistant Secretary, *ex officio*; and
  - (g) the Departmental Head of the Department responsible for planning matters, or his nominee who must occupy a position in the National Public Service of a level no lower than First Assistant Secretary, *ex officio*; and
  - (h) the Departmental Head of the Department responsible for petroleum matters, or his nominee who must occupy a position in the National Public Service of a level no lower than First Assistant Secretary, *ex officio*; and
  - (i) the Departmental Head of the Department responsible for land matters, or his nominee who must occupy a position in the National Public Service of a level no lower than First Assistant Secretary, *ex officio*; and
  - (j) the Departmental Head of the Department responsible for commerce and industry matters, or his nominee who must occupy a position in the National Public Service of a level no lower than First Assistant Secretary, *ex officio*; and
  - (k) three nominees, who must be customary landowners of land with economic gas reserve in the Gas Project provinces (Southern Highlands, Western Province and Gulf Province), and nominated, one each by the Governors of the three provinces; and
  - (l) one nominee of the Minister ordinarily resident in the National Capital District who must be a lawyer, accountant, economist or businessman.
- (2) After the Authority has granted one or more rights for the development of land for use as a petroleum processing facility in the Park, the Minister may appoint two additional nominee to the Board to represent developers in the Park.
- (3) A member of the Board, other than an *ex officio* member –
- (a) shall be appointed in accordance with the *Regulatory Statutory Authorities (Appointments to Certain Offices) Act 2004*; and
  - (b) must be ordinarily resident in the country; and
  - (c) must be of generally recognised standing, experience and expertise in matters relevant to the functions of the Authority, including (without limitation) landowner relations, business and social development, petrochemical, production, petroleum refining, financial management, corporate governance, accounting or law; and
  - (d) subject to Section 17, shall hold office for a term of four years; and
  - (e) is eligible for re-appointment.

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(4) A reference in Subsection (1) to any organisation or body includes the organisation or body as it may be renamed or reconstituted, and any successor to the organisation or body.

### **11. INELIGIBILITY TO BE A MEMBER OF THE BOARD.**

A person may not be appointed as a member of the Board under Section 10 if he –

- (a) has been elected, or is a candidate for election or appointment to the National Parliament, Provincial Assembly, Local-level Government or equivalent representative body; or
- (b) is or has been insolvent, or has applied to take the benefit of any law for the benefit of bankrupt or insolvent debtors, or has compounded with his or her creditors or made an assignment of his remuneration for their benefit; or
- (c) is 70 years of age or over; or
- (d) is standing or is to stand trial for, or has been convicted of, any offence punishable under a law by imprisonment; or
- (e) is prohibited from being a director or member or promoter of, or from taking part (in any way, whether directly or indirectly) in the management of, a company under any law; or
- (f) has his or her affairs administered under any law relating to mental health.

### **12. ALTERNATES.**

(1) A members of the Board referred to in Section 10 may, by a signed instrument in writing delivered to the Authority appoint a person who is currently in the country to be the member's alternate.

(2) If a member of the Board appointed under Section 10 is for any reason unable to act, his or her alternate, if any, has and may exercise all of the member's powers, functions, duties and responsibilities, and this Act applies accordingly.

(3) An alternate may, unless the Board otherwise directs, attend meetings of the Board but may not, except where he is attending in the absence of the member of the Board for whom he is the alternate, take part in debate, vote on any matter or be counted towards a quorum.

(4) An alternate is entitled independently to receive all notices, papers, minutes of meetings and other relevant information to which members of the Board are entitled.

### **13. FEES AND EXPENSES OF MEMBERS OF THE BOARD AND ALTERNATES.**

(1) As soon as practicable after the coming into operation of this Act, the Board shall recommend to the Minister an appropriate fee to be paid under the *Boards (Fees and Allowances) Act* (Chapter 299) to each member of the Board, other than an *ex officio* member, having regard to the functions, duties and responsibilities of the members of the Board under this Act.

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(2) Each member of the Board, other than an *ex officio* member, is to be paid such a fee as the Minister determines after considering the recommendation of the Board under Subsection (1).

(3) The Authority shall pay to each member of the Board reasonable travelling and other expenses incurred in carrying out their duties under this Act.

(4) An alternate of a member of the Board, other than an *ex officio* member, shall when attending a board meeting in place of the member, for whom he is the alternate, be paid by the Authority the applicable fee and any other expenses.

### **14. CHAIRMAN AND DEPUTY CHAIRMAN.**

(1) The National Executive Council, on the recommendation of the Minister, may from time to time appoint one of the members of the Board to be the Chairman of the Board (other than the Chief Executive Officer) and, subject to Section 17, shall determine the period of which the member so appointed is to hold office as Chairman of the Board (being a period which does not exceed the term of appointment of the person as a member of the Board pursuant to Section 10).

(2) The National Executive Council, on the recommendation of the Minister, may from time to time appoint one of the members of the Board (other than the Chairman or the Chief Executive Officer) to be the Deputy Chairman of the Board, and, subject to Section 17, determine the period for which the member so appointed is to hold office as Deputy Chairman of the Board (being a period which do not exceed the term of appointment of that person as a member of the Board pursuant to Section 10).

(3) The Chairman and Deputy Chairman hold office as Chairman and Deputy Chairman respectively until the earlier of the termination or expiration of the period of their respective appointments or until they cease respectively to be members of the Board.

### **15. APPLICATION OF LEADERSHIP CODE.**

Pursuant to Section 26(1)(g) (*Application of Division 2*) of the *Constitution*, the office of the member of the Board is a public office to and in relation to which Division III.2 (*Leadership Code*) of the *Constitution* applies.

### **16. LEAVE OF ABSENCE OF MEMBERS OF THE BOARD.**

(1) The Chairman may grant leave of absence to a member of the Board (other than the Deputy Chairman) on such terms and conditions as the Chairman determines.

(2) The Board may grant leave of absence to the Chairman or Deputy Chairman on such terms and conditions as the Board determines.

### **17. VACATION OF OFFICE BY MEMBERS OF THE BOARD.**

(1) A member of the Board, other than an *ex officio* member, may resign his office by writing signed by him and delivered to the Authority.

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- (2) If a member of the Board, other than an *ex officio* member –
- (a) dies or becomes permanently incapable of performing his duties; or
  - (b) resigns his office in accordance with Subsection (1); or
  - (c) is absent, except with the written consent of the Board or is on leave of absence under Section 16, from three consecutive meetings of the Board; or
  - (d) does not comply with Section 20; or
  - (e) becomes a person who is not eligible under Section 11 to be appointed as a member of the Board; or
  - (f) ceases to be ordinarily resident in the country; or
  - (g) commits an offence against this Act,

his appointment as a member of the Board (and as Chairman or Deputy Chairman, if the member is also the Chairman or the Deputy Chairman) shall be deemed to have been terminated with immediate effect, and shall cease to be a member of the Board accordingly.

(3) The Minister, acting on the advice and recommendation of the Board but not otherwise, may at any time, by written notice, inform a member of the Board (other than an *ex officio* member) that he intends to terminate the member's appointment on the grounds of inefficiency, incapacity or misbehaviour.

(4) Within 14 days after receiving a notice under Subsection (3), the member may reply in writing to the Minister, who must consider the reply and where appropriate, terminate the appointment by written notice to the member.

(5) Where the member referred to in Subsection (3) does not reply in accordance with Subsection (4), the Minister may terminate the member's appointment by written notice to the member.

**18. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.**

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

**19. MEETINGS OF THE BOARD.**

(1) The Board is to meet as often as the business of the Board requires, and at such times and places as the Chairman directs, but in any event not less frequently than once in every three months.

(2) Not less than seven days notice in writing of a meeting of the Board, setting out the date, time and place of the meeting and the matters to be discussed at the meeting, is to be sent to every member of the Board who is in the country.

(3) An irregularity in the notice of a meeting of the Board is waived where all members of the Board entitled to receive the notice either attend the meeting without protest as to the irregularity or agree to the waiver.



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- (4) At a meeting of the Board –
- (a) subject to Subsection (7), the Chief Executive Officer and six other members constitute a quorum; and
  - (b) the Chairman, or in his absence the Deputy Chairman, is to preside, and if both the Chairman and Deputy Chairman are absent, the members present may appoint, from among their own number a chairman for that meeting; and
  - (c) subject to Paragraph (e), each member of the Board has one vote; and
  - (d) matters arising are to be decided by a majority of the votes of the members present and voting; and
  - (e) the person presiding has a deliberative, and if there is an equality of votes on any matter, also a casting vote.
- (5) The Board is to cause minutes of its meetings to be recorded and kept.
- (6) Subject to this Act, the procedures of the Board are to be as determined by the Board.
- (7) At a meeting of the Board at which there is to be consideration of the investigation, suspension or recommendation for dismissal of the Chief Executive Officer –
- (a) Ten members of the Board, other than the Chief Executive Officer, constitute a quorum; and
  - (b) if the members present so permit, the Chief Executive Officer may be present, but may not vote or participate in any discussion or debate other than at a time determined by the members present to answer or defend any allegation against him; and
  - (c) no other business or matter may be transacted, considered or dealt with.

**20. DISCLOSURE OF INTEREST BY MEMBERS OF THE BOARD.**

- (1) A member of the Board who has a direct or indirect interest 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 meeting of the Board.
- (2) Any disclosure under Subsection (1) is to be recorded in the minutes of the relevant meeting of the Board, and the member making the disclosure –
- (a) may not participate, after the disclosure, in any debate, deliberation, decision or vote of the Board in relation to the matter during the meeting at which the disclosure is made or at any other meeting of the Board; and
  - (b) is to be disregarded for the purpose of determining whether a quorum is present for the meeting of the Board at which the disclosure is made or at any other meeting of the Board for any such debate, deliberation, decision or vote in relation to the matter.

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**21. COMMITTEES OF THE BOARD.**

(1) The Board may, from time to time, establish committees of the Board to advise the Board on such matters as the Board considers necessary.

- (2) In establishing a committee under Subsection (1), the Board may –
- (a) appoint such persons as it considers necessary; and
  - (b) specify the functions and procedures of the committee.

(3) A member of a committee who is not a member of the Board, an employee of the Authority or an officer of the National Public Service may receive fees and allowances under the *Boards (Fees and Allowances) Act* (Chapter 299).

**22. SECRETARY OF THE BOARD.**

(1) The Board shall appoint an employee of the Authority (other than the Chief Executive Officer) to be the Secretary of the Board.

- (2) The functions of the Secretary are –
- (a) to perform secretarial services on behalf of the Board; and
  - (b) to convene meetings of the Board and to record minutes of those meetings; and
  - (c) to convene meeting of committee (if any) of the Board and to record minutes of those meetings; and
  - (d) otherwise to be responsible to the Chief Executive Officer.

**23. BY-LAWS.**

(1) Subject to this Act, the Board may, in respect of the Park, make By-laws as it thinks fit for all or any of the following purposes:-

- (a) the good rule and management of the Park; and
- (b) the use and custody of the seal of the Authority and the Board; and
- (c) the more effectual carrying out of the functions and powers of the Authority; and
- (d) the protection of any property used in the Park from damage or injury; and
- (e) for prescribing precautions to be taken for protection of persons or property from accident or damage; and
- (f) for regulating traffic, shipping and marine facilities; and
- (g) for prescribing the times, terms and conditions upon which the public enter or be in or upon the Park; and
- (h) for the administration of the Park, or for the control of activities thereon or for the management of any business ancillary thereto that may be carried on pursuant to this Act.

(2) The By-laws may prescribe penalties of fines not exceeding K5,000.00 for offences against the By-laws.

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- (3) By-Laws made under this section are of no force or affect until –
- (a) approved by the Head of State, acting on advice; and
  - (b) notice of the making of the By-laws is published in the National Gazette.

***Division 3. – Staff of the Authority.***

**24. CHIEF EXECUTIVE OFFICER.**

(1) There shall be a Chief Executive Officer of the Authority who shall be appointed, suspended and dismissed in accordance with the ***Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004.***

- (2) The Chief Executive Officer is –
- (a) the chief executive officer of the Authority; and
  - (b) the head of the staff of the Authority; and
  - (c) responsible to the Board for the efficient carrying out of the functions of the Authority.

(3) Subject to this section, the Chief Executive Officer is to be appointed for a term of four years and on such terms and conditions as are determined by the National Executive Council, and is eligible for reappointment.

- (4) The appointment of the Chief Executive Officer may be terminated or suspended in accordance with the terms approved under Subsection (3), and the grounds for such termination or suspension shall exist if the Chief Executive Officer –
- (a) becomes incapable for any reason of performing his duties; or
  - (b) other than with the written consent of the Board, engages in any paid employment or carries on business outside the duties of his office; or
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his salary for their benefit; or
  - (d) is convicted of an offence that is punishable under a law by imprisonment; or
  - (e) ceases to be ordinarily resident in the country; or
  - (f) breaches a provision of this Act.

(5) If the Chief Executive Officer's appointment is terminated under the ***Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*** –

- (a) the Chief Executive Officer shall not be entitled to; and
- (b) the Board may not authorise the provision or giving to the Chief Executive Officer of, and the Authority may not provide or give to the Chief Executive Officer,

any compensation or payment in respect of the termination of his appointment, and the Authority will not have any liability whatsoever to the Chief Executive Officer in respect of the termination of his appointment, other than in respect of any unpaid remuneration or benefits

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attributable to the period before the termination, payable in accordance with the terms and conditions of the Chief Executive Officer's contract of employment as determined by the Board under Subsection (3).

(6) Any contract, arrangement or understanding under which the Chief Executive Officer would, but for this subsection, be entitled to any compensation or payment in respect of the termination of his appointment other than as provided in Subsection (5), is void *ab initio* and of no force or effect.

### **25. FUNCTIONS OF THE CHIEF EXECUTIVE OFFICER.**

(1) The functions, powers and duties of the Chief Executive Officer are—

- (a) to manage the Authority in accordance with the policies and directions of the Board; and
- (b) to advise the Board on any matter concerning the Authority referred to him by the Board; and
- (c) otherwise as specified in this Act.

(2) The Chief Executive Officer—

- (a) shall carry out and perform the functions, powers and duties required of him under this Act and his contract of employment; and
- (b) has such other functions, powers and duties as the Board may from time to time determine.

(3) The Chief Executive Officer may, by instrument in writing, delegate all or any of his functions, powers (other than this power of delegation) or duties to any person and shall forthwith report any such delegation to the Board in writing.

(4) The Minister may, after consultation with, and acting on, the advice and recommendation of the Petroleum Advisory Board, give to the Chief Executive Officer general or specific directions as to policy.

(5) Any direction as to policy given by the Minister under Subsection (4) must not be inconsistent with the provisions of this Act and the *Oil and Gas Act 1998*.

### **26. OTHER STAFF AND EMPLOYEES OF THE AUTHORITY.**

(1) The Chief Executive Officer may appoint persons to be employees of the Authority, in accordance with procedures established and approved by the Board, for the purpose of giving effect to this Act and carrying out the functions of the Authority.

(2) Subject to this Act, employees appointed under Subsection (1) shall be appointed on such terms and conditions as the Board shall determine.

(3) The Chief Executive Officer may dismiss any employee of the Authority in accordance with procedures established and approved by the Board.

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(4) The Chief Executive Officer and the employees appointed under Subsection (1) constitute the staff of the Authority.

(5) The Chief Executive Officer is to direct and control the employees of the Authority.

**27. CONTRACT OF EMPLOYMENT.**

(1) The Chief Executive Officer and each employee of the Authority is to be employed under a contract of employment that –

- (a) in the case of the Chief Executive Officer, is to be executed by the Authority under its common seal attested by two members of the Board (not including the Chief Executive Officer) and by the Chief Executive Officer; and
- (b) in the case of any other employee, is to be executed on behalf of the Authority and by the employee in accordance with procedures established by the Board.

(2) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the terms and conditions of the contract of employment of the Chief Executive Officer and other members of the staff of the Authority are as determined by the Board.

**PART III. – FINANCES OF THE AUTHORITY.**

**28. APPLICATION OF THE *PUBLIC FINANCES (MANAGEMENT) ACT 1995*.**

(1) Without limitation of any function or power of the Authority under this Act, Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Authority.

(2) The sum of K500,000 is specified for the purposes of Section 59 of the *Public Finances (Management) Act 1995*.

(3) For the purpose of Section 62(2) of the *Public Finances (Management) Act 1995*, the Authority is declared to be a trading enterprise.

**29. FINANCIAL POWERS.**

(1) This section does not limit any other function or power of the Authority under this Act.

(2) Moneys of the Authority that are not immediately required may be invested on such terms that the Board, in its discretion, may determine, subject to the provisions of Section 57 of the *Public Finances (Management) Act 1995*.

(3) Subject to Subsection (4), the Authority may borrow money or otherwise obtain financial accommodation for its purposes in any manner on such terms and within such limits as the Board, in its discretion, may determine, subject to the provisions of Section 55 and Section 56 of the *Public Finances (Management) Act 1995*.

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(4) The Authority may not borrow money if and to the extent that, immediately after the money is borrowed, the total principal amount outstanding of all money borrowed by the Authority exceeds the total assets of the Authority.

(5) For the purposes of the powers referred to in this Section 28, the Authority may enter into and grant any security, indemnity, guarantee, sale, purchase, lease, licence or other transaction, subject to the provisions of Section 61 of the *Public Finances (Management) Act 1995* if applicable.

### **30. FUNDS OF THE AUTHORITY.**

(1) The funds of the Authority consist of –

- (a) all monies appropriated by Act for the purposes of carrying out or giving effect to this Act; and
- (b) all monies received by the Authority by way of grants and subscriptions; and
- (c) all monies received by the Authority from investments or borrowings, disposal of any assets; and
- (d) all monies received by the Authority for goods or services provided by the Authority, including utilities; and
- (e) all fees paid or payable under this Act, or any other Act the administration of which is the responsibility of the Authority from time to time, after the coming into operation of this Act; and
- (f) all rents paid or payable in respect of land at the Park in accordance with Section 42; and
- (g) any monies paid or payable under this Act in respect of the feedstock levy; and
- (h) any monies paid or payable to the Authority under any law (other than this Act) in respect of any fee or levy; and
- (i) all fines or penalties paid or payable under this Act, or any other Act the administration of which is the responsibility of the Authority from time to time, after the coming into operation of this Act; and
- (j) all other monies received by the Authority in the exercise and performance of its powers, functions and duties under this Act.

(2) The Authority must pay to the consolidated revenue so much of its funds as a surplus to its current and future requirements as determined by the Minister on the recommendation of the Board and may retain any surplus funds accruing from its operations or activities in a given year.

(3) The funds of the Authority may be expended only –

- (a) in payment or discharge of expenses, obligations and liabilities of the Authority; and
- (b) in payment of the remuneration of the staff of the Authority and of allowances to the members of the Board, or members of any committee of the Board; and

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- (c) in making investments authorised by this Act; and
- (d) for such other purposes as are consistent with the functions of the Authority as the Board, after consultation with the Chief Executive Officer, may determine.

**31. LIABILITY TO TAXATION.**

For the purposes of Section 24(1) of the *Income Tax Act 1959*, the Authority is a public authority constituted under this Act.

**PART IV. – FINANCIAL REPORTING, ACCOUNTING RECORDS,  
ANNUAL REPORT AND AUDIT.**

***Division 1. – Interpretation.***

**32. INTERPRETATION.**

In this Part –

"accounting period" means the period commencing on the coming into operation of this Act and ending on the next succeeding balance date, and thereafter means the period of one year ending on a balance date; and

"balance date" means the close of 31 December; and

"financial statements", in relation to the Authority and a balance date, means –

- (a) a balance sheet for the Authority as at the balance date; and
- (b) an income and expenditure statement for the Authority in relation to the accounting period ending at the balance date; and
- (c) a statement of cash flows for the Authority in relation to the accounting period ending at the balance date,

together with any notes or documents giving information in relation to the balance sheet, income and expenditure statement or statement of cash flows; and

"generally accepted accounting practice" has the meaning given to it by Section 172 of the *Companies Act 1997*, as if the Authority were a reporting company within the meaning of that expression in that section and any provision referred to in that section.

***Division 2. – Preparation of Financial Statements.***

**33. PREPARATION OF FINANCIAL STATEMENTS.**

(1) The Board is to ensure that, within five months after the balance date of the Authority, financial statements that comply with Subsection (2) are –

- (a) completed in relation to the Authority and that balance date; and
- (b) dated and signed on behalf of the Board by the Chief Executive Officer.

(2) The financial statements of the Authority are to comply with generally accepted accounting practice.

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(3) For the purposes of this section, where, in complying with generally accepted accounting practice, the financial statements do not give a true and fair view of the matters to which they relate, the Board shall add such information and explanations as will give a true and fair view of those matters.

***Division 3. – Accounting Records.***

**34. ACCOUNTING RECORDS TO BE KEPT.**

- (1) The Board is to cause accounting records to be kept that –
  - (a) correctly record and explain the transactions of the Authority; and
  - (b) will at any time enable the financial position of the Authority to be determined with reasonable accuracy; and
  - (c) will enable the Board to ensure that the financial statements of the Authority comply with Section 33; and
  - (d) will enable the financial statements of the Authority to be readily and properly audited.
  
- (2) Without limiting Subsection (1), the accounting records are to contain –
  - (a) entries of money received and spent each day and the matters to which it relates; and
  - (b) a record of the assets and liabilities of the Authority.
  
- (3) The accounting records are to be kept –
  - (a) in written form; and
  - (b) in a form or manner in which they are easily accessible and convertible into written format.
  
- (4) The Authority shall keep accounting records for the current accounting period and for the last five completed accounting periods of the Authority.

***Division 4. – Annual Reports.***

**35. PREPARATION OF ANNUAL REPORT.**

- (1) The Board shall, within five months after each balance date of the Authority, furnish to the Minister an annual report on the affairs of the Authority during the accounting period ending on that date, and a copy of the annual report shall be furnished to the Departmental Head of the Department responsible for treasury matters.
  
- (2) The Minister shall table the annual report at the first sitting of the Parliament subsequent to his receipt of the annual report.



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**36. CONTENTS OF ANNUAL REPORT.**

Each annual report of the Authority shall be in writing and dated and is to —

- (a) include a report on the performance and management of the operations and activities of the Authority during the accounting period; and
- (b) include financial statements for the accounting period completed and signed in accordance with Section 33; and
- (c) describe any change in accounting policies made during the accounting period; and
- (d) state particulars of any interest disclosed by a member of the Board under Section 20(1) during the accounting period; and
- (e) state, in respect of each member or former member of the Board (including the Chief Executive Officer and any former Chief Executive Officer), the total of the remuneration and the value of other benefits received by that member or former member during the accounting period; and
- (f) state the number of employees or former employees of the Authority, not being members of the Board, who, during the accounting period, received remuneration and any other benefits in their capacity as employees, the value of which in aggregate was or exceeded K50,000 per annum, and is to state the number of such employees or former employees in brackets of K10,000; and
- (g) state the total number of any donations or commissions paid by the Authority during the accounting period; and
- (h) state the names of the persons holding office as members of the Board at the end of the accounting period and the name of any person who ceased to hold office as member of the Board during the accounting period; and
- (i) be signed on behalf of the Board by the Chairman and the Chief Executive Officer.

**37. AVAILABILITY OF ANNUAL REPORT AND AUDIT.**

(1) Any annual report of the Authority that is furnished to the Minister under Section 35 is a public document.

(2) At the request of any person at any time, the Authority is to provide the person with a copy of its most recent annual report on payment by that person of such fee (if any) as is determined by the Authority.

(3) The fee under Subsection (2) may not exceed K10.00, or other such higher amount as may be prescribed.

(4) Nothing in this section affects the application to the Authority of the *Audit Act* 1989.

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(5) The Board shall, in respect of each accounting period of the Authority and before, or as soon as practicable after, the commencement of the relevant accounting period, appoint a member of a reputable accounting firm who is a Registered Company Auditor under the *Accountants Act 1996* and who is ordinarily resident in the country, to be the auditor of the Authority and to audit the financial statements of the Authority for the relevant accounting period.

- (6) The auditor appointed under Subsection (5) shall –
- (a) be appointed for a term of one year; and
  - (b) hold office on such terms and conditions as are determined by the Board; and
  - (c) is eligible for re-appointment.

(7) Sections 190(2), 192, 193, 198, 200 and 202 of the *Companies Act 1997* shall apply in relation to an auditor appointed under Subsection (5) as if –

- (a) references to a company or a reporting company were references to the Authority, and references to the board of a company were references to the Board; and
- (b) a reference to a director of a company were a reference to a member of the Board; and
- (c) a reference to the shareholders of a company were a reference to the Minister; and
- (d) the financial statements of the Authority were financial statements to which Section 200 of the *Companies Act 1997* applies.

(8) The Authority shall appoint a qualified person to be the Authority's internal auditor, who shall provide a written audit report as requested by the Board, but not less often than quarterly, and a copy of each audit report shall be presented to the Minister and to the Departmental Head of the Department responsible for treasury matters.

**PART V. – LAND ACQUISITION AND REGISTRATION.**

**38. DEALINGS IN LAND LOCATED IN THE PARK.**

(1) Without limiting its powers as provided for in this Act, the Authority may acquire, hold, dispose of or otherwise deal with land and any interest in land located in the Park.

(2) Notwithstanding any Act or law to the contrary, no interest in any land located in the Park may be acquire, disposed of or otherwise dealt with unless –

- (a) the Authority is a party to the dealing; or
- (b) the dealing is approved by the Authority,

and any dealing in land or interest in land located in the Park otherwise than in accordance with this section is void and of no effect.

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(3) Without limited subsection (2), in exercising their respective powers pursuant to the *Land Act 1996* and the *Land Registration Act* (Chapter 191) in relation to land located in the Park, the Minister responsible for Lands and Physical Planning matters, the Secretary of the Department responsible for the Lands and Physical Planning matters, the Land Board and the Registrar of Titles may only do so –

- (a) if the matter in relation to which a power is to be exercised is a dealing in an interest in land located in the Park, the Authority is a party to the dealing; or
- (b) in relation to the exercise of any power in relation to any other matter, in accordance with a written recommendation of the Authority,

and the exercise of any power in relation to any land in the Park otherwise than in accordance with this subsection in void and of no effect.

### **39. VESTING OF STATE ASSETS AND LIABILITIES.**

(1) Notwithstanding any Act, rule of law or agreement to the contrary, the Minister may, on behalf of the State, do any one or more of the following :-

- (a) transfer to the Authority or an authority subsidiary assets and liabilities of the State; and
- (b) authorize the Authority or an authority subsidiary to provide goods and services or manage assets or liabilities of the State; and
- (c) vest in the Authority or an authority subsidiary any rights conferred by declarations, instruments, orders or notices applying to land transferred to the Authority or an authority subsidiary; and
- (d) grant to the Authority or an authority subsidiary leases, licences, easements, permits or rights of any kind in respect of any assets or liabilities of the State,

for such consideration, and on such terms and conditions, as the Minister may agree with the Authority or an authority subsidiary.

(2) For the purposes of this section, assets and liabilities of the State shall be deemed to include assets or liabilities held by any of the following :-

- (a) an authority subsidiary; or
- (b) a statutory body established by an Act; or
- (c) any Minister or other official in trust for the State; or
- (d) any Department of State or office within such department,

which comprise land and improvements within the Park or which the Minister considers are necessarily or reasonably required by the Authority to enable the Authority to perform its functions.

(3) The Minister shall lay before the National Executive Council any contract or other document entered into pursuant to Subsection (1) within 10 days after the date thereof.

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(4) Assets that are fixed to, or are under or over, any land may be transferred to a Authority or an authority subsidiary pursuant to this Act whether or not any interest in the land is also transferred and where any such asset is so transferred, the asset and the land shall be regarded as separate assets each capable of separate ownership.

(5) Any asset or liability of the State may be transferred to a Authority or an authority subsidiary pursuant to this Act whether or not any Act or agreement relating to the asset or liability permits such transfer or requires any consent to such a transfer.

- (6) Where a transfer of the kind described in Subsection (5) takes place -
- (a) the transfer shall not entitle a person to terminate, alter or in any way affect the rights or liabilities of the State, or the Authority or an authority subsidiary under any Act or agreement; and
  - (b) where the transfer is registrable, the person responsible for keeping the register shall register the transfer forthwith after written notice of the transfer is received by him from any person authorized for this purpose by the Minister; and
  - (c) the laying before the National Executive Council of any contract or other document relating to the transfer shall be deemed to be notice of the transfer, and any third party shall after the date of such contract or document deal with the Authority or an authority subsidiary in place of the State; and
  - (d) the State shall remain liable to any third party as if the asset or liability had not been transferred but shall be indemnified by the Authority or an authority subsidiary in respect of any liability to that third party; and
  - (e) any satisfaction or performance by the Authority or an authority subsidiary in respect of the asset or liability shall be deemed to be also satisfaction or performance by the State; and
  - (f) any satisfaction or performance in respect of the asset or liability by a third party to the benefit of the Authority or an authority subsidiary shall be deemed to be also to the benefit of the State.

- (7) No provision in any agreement limiting the State's right -
- (a) to sell any assets to third parties; or
  - (b) for determining the consideration for the sale of any assets to third parties, or obliging the State to account to any person for the whole or part of the proceeds of sale by the State of any assets to third parties, or obliging the State to pay a greater price than otherwise by reason of or as a consequence of the sale of any assets to third parties,

shall have any application or effect in respect of any agreement or transfer entered into or effected pursuant to or under this Act or pursuant to such an agreement or transfer.

- (8) In any case where -
- (a) the State transfers or agrees to transfer to a Authority or an authority subsidiary assets which the State acquires or is entitled to acquire from another person for the purpose of carrying on any activity; and

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- (b) the assets are acquired by the State, or the State's rights to acquire the assets arise, under an agreement with that person that contains a provision specifying or limiting the State's rights to recover compensation or damage; and
- (c) the Authority or an authority subsidiary carried on that activity or part of that activity whether or not it also carries on any other activity,

the provision referred to in Paragraph (b) shall, notwithstanding the transfer of the assets to the Authority or an authority subsidiary, continue in force in favour of the State as if the Authority or an authority subsidiary was part of the State, the State continued to carry on the activity, and any loss suffered by the Authority or an authority subsidiary was a loss suffered by the State and not, by reason only of having been suffered by the Authority or an authority subsidiary, and indirect or a consequential loss or a loss suffered by a third party.

- (9) In any case where -

- (a) the State transfers or agrees to a Authority or an authority subsidiary assets which the state acquires or is entitled to acquire from another person for the purpose of carrying on any activity; and
- (b) the assets are acquired by the State, or the State's rights to acquire the assets arise, under an agreement with that person that contains a provision relieving the State from performing any obligation imposed upon it, or relieving the State from any claim or cause of action based on the failure by the State to perform any such obligation, as a result of any particular event; and
- (c) the Authority or an authority subsidiary carries on that activity or part of that activity whether or not it also carries on any other activity,

the provision referred to in Paragraph (b) shall, notwithstanding the transfer of the assets to the Authority or an authority subsidiary, continue to in force in favour of the State as if the Authority or an authority subsidiary was part of the State, the State continued to carry on the activity and as if the occurrence of any such event referred to in the provision in relation to the Authority or an authority subsidiary was the occurrence of the event in relation to the State.

- (10) Where -

- (a) rights or obligations to provide goods or services to third parties are transferred to a Authority or an authority subsidiary pursuant to this Act; and
- (b) those goods or services have previously been provided by the State on terms and conditions wholly or partly prescribed by any Act; and
- (c) the Minister, has by order declared that this subsection shall apply in respect of those goods or services,

the goods or services shall, to the extent that those terms and conditions are not already contained in contracts between the State and third parties, from the date of transfer be deemed to be provided pursuant to contracts between the Authority or an authority subsidiary and the third parties (whether or not the Act is repealed), and each such contract shall be deemed to include such of the terms and conditions contained in that Act (with all necessary modifications), and such of the following provisions as are specified in the order -

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- (d) a condition permitting termination at any time by the third party on giving 14 days' notice to the Authority or an authority subsidiary;
- (e) a condition permitting variation or termination at any time by the Authority or an authority subsidiary on giving to the third party one month's notice in such manner (including newspaper advertising) as the Authority or an authority subsidiary thinks fit.

(11) Where any land that is subject to any lease, licence, permit or right, created on terms and conditions wholly or partly set out in the **Land Act 1996** or any other Act (other than this Act), has been or is to be transferred to the Authority or an authority subsidiary pursuant to this Act, the Minister may declare that such of the provisions of the **Land Act 1996** or other Act (other than this Act) as are specified in the declaration) shall continue to apply in relation to the land and such licence, lease, permit or right.

(12) Where a declaration is made under Subsection (11), the provisions of the Act referred to in the declaration shall, with all necessary modifications, continue to apply in relation to the land and the terms and conditions of such licence, lease, permit or right subject to any agreement to -

- (a) amend or revoke any such terms or conditions; or
- (b) revoke any such term or condition and substitute another term or condition for it,

made between the owner for the time being of the land and the holder for the time being of the lease, licence, permit or right.

(13) Where land was leased to the State under a lease administered by the Minister responsible for land matters, the Minister shall not, except with the consent of the lessor or where the lease or permits, transfer that leasehold interest to the Authority or authority subsidiary, but the Minister may enter into an agreement with Authority or authority subsidiary pursuant to Subsection (12)(b) to manage, on behalf of the State, its rights under that lease.

(14) Upon publication of the notice referred to in Section 3(4) -

- (a) all interests of the State in any land located in the Park are vested in Konebada Petroleum Park Authority; and
- (b) where the State acquires any land located in the Park after the date of the notice referred to in Section 3(4), that land automatically vests in Authority on the date of its acquisition by the State; and
- (c) the State's beneficial interest in any shares in Konebada Petroleum Park Authority Limited are vested in the Authority.

(15) Where any property which becomes vested in the Authority or an authority subsidiary by virtue of this Section 39 in land registered under the **Land Registration Act** (Chapter 191), the Registrar of Titles shall, on application by the Authority or an authority subsidiary, without formal transfer and without fee, enter or register the applicant in the register kept under that Act and, on entry and registration, grant a certificate of title, lease or other instrument evidencing title to the land to the applicant.

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**40. EXEMPTION FROM TRANSFER TAXES, DUTIES AND FEES.**

(1) Subject to the approval of the Minister responsible for financial matters by notice in the National Gazette to that effect, no stamp duty, income tax, goods and services tax, provincial or local level government tax, fee or duty is payable on any agreement, contract, transfer, conveyance, order, vesting, lease or licence to which the Authority is a party made for the purpose of this Act.

(2) Other than as expressly provided for in this Act, for the avoidance of doubt, the *Goods and Services Tax Act 2003* applies in the area of the Park.

**41. INTERESTS.**

Notwithstanding any Act, rule, law or agreement to the contrary, the Authority or an authority subsidiary may deal with land and other assets which it holds in such manner as it sees fit, and may grant or create any interest in land in the Park either in its own name or in the name of the State.

**42. RENTAL OF LEASEHOLD.**

Where the Authority or an authority subsidiary grants a leasehold interest or a licence interest in respect of land, the rental or licence fee payable by the holder of that interest must be payable to the Authority or an authority subsidiary in an amount as prescribed.

**PART VI. – FEEDSTOCK LEVY AND DUTY EXEMPTION.**

**43. FEEDSTOCK LEVY.**

(1) A feedstock levy is imposed on an enterprise in the processing of petroleum at the Park for use as feedstock by an enterprise at the point of first entry of that petroleum to the Park boundary (or another proximate location approved by the Board).

(2) Assessment and collection of the feedstock levy shall be as prescribed which includes –

- (a) the rate of the feedstock levy; and
- (b) the manner of measurement and calculation of the feedstock levy; and
- (c) the manner of payment of the feedstock levy; and
- (d) such other matters as are necessary or convenient for the assessment and collection of the feedstock levy, as determined by the Authority.

(3) An enterprise in respect of which this section applies shall pay to the Authority the feedstock levy referred to in Subsection (2).

**44. EXEMPTION FROM DUTY OF PETROLEUM PRODUCTS PRODUCED, ETC., FROM THE PARK.**

(1) Subject to this Act, petroleum products of any description, except those that are specifically prohibited by law, may be imported into, exported from, produced, manufactured, purchased, sold or otherwise processed in the Park in accordance with this Act without payment of any customs or excise duty under a Duty Law.

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(2) For the purposes of Subsection (1), the Commissioner General may, from time to time, under his hand, issue directions as to the manner in which petroleum products are to be dealt with in the Park.

(3) Where petroleum products originating from a place outside of Papua New Guinea or produced or manufactured within the Park are taken from the Park to a principal customs area, those petroleum products are liable to customs duty at the time of entry into the principal customs area.

(4) Except where the Minister responsible for financial matters determines otherwise by notice in the National Gazette to the effect, where petroleum products originating from a place inside a principal customs area are exported from the Park to a place outside Papua New Guinea, those petroleum products are liable to customs duty at the time of exit from the Park on the original value of the petroleum products at the time of entry into the Park from the principal customs area.

#### **45. EXCLUSION OF PETROLEUM PRODUCTS FROM DUTY FREE STATUS.**

(1) On the recommendation of the Authority, the Minister may, by notice in the National Gazette, declare any petroleum products or a class of petroleum products to be petroleum products to which Section 44 shall not apply.

(2) Where a declaration is made under Subsection (1) in respect of any petroleum products or a class of petroleum products, the provisions of a relevant Duty Law shall apply to such petroleum products as if the Park is a place within a principal customs area.

#### **46. PETROLEUM PRODUCTS DEEMED TO BE EXPORTED OR IMPORTED.**

Unless otherwise provided under this Act or under any other law -

- (a) petroleum products which are taken out from a principal customs area and brought into the Park are deemed to be exported from Papua New Guinea; and
- (b) petroleum products which are brought out of the Park and taken into a principal customs area are deemed to be imported into Papua New Guinea.

#### **47. PETROLEUM PRODUCTS MANUFACTURED IN THE PARK.**

(1) Subject to Subsection (2), petroleum products manufactured in the Park -

- (a) shall not be taken out of the Park except -
  - (i) for export; or
  - (ii) for transmission to a principal customs area; and
- (b) shall not be used or consumed within the Park except -
  - (i) with the written approval of the Commissioner General; and
  - (ii) on the payment of appropriate customs and excise duties or other tax payable under a relevant Duty Law as the Commissioner General shall determine.



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(2) On the recommendation of the Authority, the Minister may, from time to time, by notice in the National Gazette, determine the quantities of manufactured petroleum products or a class of petroleum products a manufacturer may dispose of for the purposes of -

- (a) export under Subsection (1)(a)(i); and
  - (b) transmission to a principal customs area under Subsection (1)(a)(ii); and
  - (c) use or consumption within the Park under Subsection (1)(b),
- within a calendar year of manufacture of such petroleum products.

**48. PETROLEUM PRODUCTS PERMITTED INTO THE PARK.**

- (1) Subject to this Act, petroleum products -
- (a) of any description which are to be used directly for the manufacture of other petroleum products; or
  - (b) manufactured in a principal customs area for purpose of export, may be brought into the Park.

(2) No other petroleum products except those referred to in Subsection (1) shall be brought into the Park.

**49. CONTRAVENTION OF PART VI.**

(1) A person who imports into, exports from, produces, manufactures, purchases, sells or otherwise deals with petroleum products in the Park in contravention of this Part is guilty of an offence.

Penalty: (a) For the first offence -

- (i) a fine of not less than ten times the amount of the customs or excise duty which is payable on the goods the subject of the offence or which would otherwise have been payable on the petroleum products the subject of the offence if this Act had not applied to them or K5,000.00, whichever is the lesser amount; or
  - (ii) imprisonment for a term not exceeding two years, or both;
- And

(b) For the second or subsequent offence -

- (i) a fine of not less than twenty times the customs or excise duty or tax which is payable on the petroleum products the subject of the offence or which would otherwise have been payable on the petroleum products the subject of the offence if this Act had not applied to them or K10,000.00, whichever is the lesser amount; or
- (ii) imprisonment for a term not exceeding two years, or both.

(2) Where the value of the petroleum products cannot be ascertained for the purposes of Subsection (1), the penalty imposed shall be a fine not exceeding K5,000.00 and not exceeding K50,000.00 or imprisonment for a term not exceeding two years or both.

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**PART VII. – APPLICATION OF OTHER ACTS.**

**50. APPLICATION OF ACTS OF THE NATIONAL PARLIAMENT.**

(1) All Acts apply to the Authority and to the Park with the exception of the following Acts (and subordinate instruments made under them), which do not apply to the Authority and the Park –

- (a) ***Building Act*** (Chapter 301); and
- (b) ***Harbours Act*** (Chapter 240); and
- (c) ***Independent Consumer and Competition Commission Act 2002***; and
- (d) ***National Capital District Water Supply and Sewerage Act 1996***; and
- (e) ***National Water Supply and Sewerage Act 1986***; and
- (f) ***National Roads Authority Act 2003***; and
- (g) ***Physical Planning Act 1989***; and
- (h) ***Roads Maintenance Act*** (Chapter 246).

(2) In exercising its powers under this Act, the Authority may, and if required by the State or any person or instrumentality responsible for administering the legislation referred to in Subsection (1), the Authority must, consult with any such person or instrumentality responsible for administering the legislation referred to in Subsection (1) but nothing done by the Authority is invalid only because it did not consult with any such person or instrumentality.

(3) The State and any agency or instrumentality of the State shall not grant any right giving access to any land in the Park without the consent of the Authority.

**51. APPLICATION OF CENTRAL PROVINCE LEGISLATION.**

(1) Except as provided in Subsection (2), all laws of Central Province apply to those parts of the Park that are within the boundaries of Central Province as defined in the ***Organic Law on Provincial Boundaries***.

(2) The Park and the objects of the Act and the Authority specified in Section 2 are declared to be matters of national interest for the purposes of Section 41(2) of the ***Organic Law on Provincial Governments and Local-level Governments***.

(3) This Act and any subordinate instrument made under it prevails to the extent of any inconsistency with any law of Central Province.

(4) Without limiting the generality of this Act, this Act is deemed to exhaustively cover the following subject matters of Central Province in respect of the area of the Park:-

- (a) trade and industry;
- (b) roads, transportation and facilities;
- (c) town and physical planning;
- (d) land and land development;
- (e) non-renewable natural resources.

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(5) Central Province shall not grant any right giving access to any land in the Park without the consent of the Authority.

**52. APPLICATION OF NATIONAL CAPITAL DISTRICT LEGISLATION.**

(1) Except as provided in Subsection (2), all laws of the National Capital District Commission apply to those parts of the Park that are within the boundaries of the National Capital District Commission as defined in the ***Organic Law on Boundaries of National Capital District***.

(2) The Park and the objects of the Act and the Authority specified in Section 2 are declared to be matters of national interest for the purposes of Section 41(2) of the ***Organic Law on Provincial Governments and Local-Level Governments***.

(3) This Act and any subordinate instrument made under it prevails to the extent of any inconsistency with any law of the National Capital District Commission.

(4) Without limiting the generality of this Act, this Act is deemed to exhaustively cover the following powers of National Capital District Commission to legislate in respect of the area of the Park -

- (a) business development;
- (b) roads, drains, bridges, street lighting, traffic controls and vehicle registration;
- (c) town and physical planning;
- (d) land and land development;
- (e) non-renewable natural resources.

**53. APPLICATION OF LEGISLATION ADMINISTERED BY THE COMMISSIONER GENERAL OF INTERNAL REVENUE COMMISSION.**

(1) Except where otherwise provided in this Act, all powers and functions found in the laws and regulations administered by the Commissioner General of the Internal Revenue shall apply within the area of the Park.

(2) Without limited the application of Subsection (1), the Authority shall provide necessary office accommodation for Customs, including infrastructure for entry and exit points within the Park.

**PART VIII. – REGULATIONS AND BY-LAWS.**

**54. REGULATIONS.**

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that are permitted or required to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act, and, without limitation, for prescribing matters which are to apply within the Park in lieu of those Acts which do not apply within the Park by virtue of

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Section 50(1) and for prescribing fees and for prescribing penalties of fines not exceeding K10,000.00 and default penalties of fines not exceeding K1,000.00 for infringements of the regulations.

**PART IX. - MISCELLANEOUS.**

**55. PROOF OF CERTAIN MATTERS.**

In any proceedings by or against the Authority, proof is not required, unless evidence is given to the contrary, of –

- (a) the constitution of the Authority, or
- (b) a resolution of the Board; or
- (c) the appointment of a member of the Board; or
- (d) the appointment of the Chief Executive Officer; or
- (e) the presence of a quorum at a meeting of the Board at which a determination is made or an act is done.

**56. SERVICE OF PROCESS.**

Any notice, summons, writ or other process required to be served on the Authority may be served by being left at the office of the Authority or, in the case of a notice, by being sent by post.

**57. AUTHENTICATION OF DOCUMENTS.**

Any document requiring authentication by the Authority is sufficiently authenticated with the common seal of the Authority affixed in accordance with this Act.

**58. APPOINTMENT OF ATTORNEYS.**

(1) The Authority may, by instrument under its common seal, appoint a person to act as its attorney for the purpose of doing anything that the Authority itself might lawfully do.

(2) A person appointed under Subsection (1) may, on behalf of and in the name of the Authority, do any act, exercise any power and perform any function that he is authorised by the instrument appointing him to do, exercise or perform.

**59. RECOVERY OF MONEYS DUE.**

Any money due to the Authority may be recovered by the Authority as a debt.

**60. PROTECTION FROM PERSONAL LIABILITY.**

A member for the Board, or a member of a committee of the Board or an officer or employee or servant or agent of the Authority is not personally liable for any act or default of himself or the Authority done or omitted to be done in good faith in the course of the activities or operations of the Authority or for the purposes of the Authority.

**61. GENERAL PENALTY.**

(1) A person, who acts in contravention of or fails to comply in any respect with a provision of this Act is guilty of an offence against this Act.

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(2) A person who commits an offence against this Act for which no penalty is provided elsewhere in this Act is liable to a penalty of a fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or to both, and where the offence, is a continuing offence is further liable to a default penalty of a fine not exceeding K5,000.00 for each day during which the offence is committed after conviction.

### **62. INFORMATION.**

(1) Where, in the opinion of the Board –

(a) any information, book or record in the possession or custody or under the control of a person is or are relevant to the exercise or performance of the power of functions of the Authority or to the achievement of the purposes of this Act; and

(b) it is desirable that the information be furnished to the Authority or that the book or record be produced for inspection by the Authority,

the Authority may issue to the person a written notice to that effect specifying the relevant information, book or record and specifying the place and time at which any information, book or record is to be furnished or produced to the Authority.

(2) A person who receives a notice under Subsection (1) is to furnish or produce for inspection at the place and at the time specified in the notice the information, book or record so furnished or produced may be made and retained by the Authority.

(3) The Authority or its employees may take copies of and extracts from any information, book or record furnished or produced under Subsection (2).

(4) Subsection (2) does not affect the operation of any law by or under which any information, book or record is to be kept confidential.

(5) Subject to Subsection (6), a person who, without reasonable excuse (proof of which is on him), refuses or fails, after receiving a notice under Subsection (1), to furnish any information or to produced for inspection any book or record, or who furnishes any information that is false or misleading in a material particular, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

Default penalty: A fine not exceeding K1,000.00.

(6) It is a defence to a charge of an offence against Subsection (5) if the person charged proves that the information, book or record was not relevant to the exercise or performance of the powers or functions of the Authority, to the achievement of the purposes of this Act or was not in the possession or custody or under the control of the person at the time of receipt of the notice under Subsection (1).

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**63. FALSE STATEMENTS.**

A person who, in a statement made or information furnished under or for the purposes of this Act, makes, without reasonable excuse (proof of which is on him), a statement, or gives information that is false or misleading in a material particular, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

**64. PROSECUTIONS.**

(1) Subject to the approval of the Public Prosecutor, the Authority may prosecute any offence against this Act, the ***Oil and Gas Act 1998*** or any other Act the administration of which is the responsibility of the Authority from time to time.

(2) A prosecution under this Act shall be made on indictment to the National Court.

(3) In any action brought under this Act by the Authority or against the Authority, the Court may award costs against any party or claimant other than the Authority, which costs may be recovered by the Authority as a debt due to the Authority.

(4) Any fine or penalty or any default fine or penalty to be paid by a person as a result of an action brought by the Authority is to be paid to the Authority and, in addition to any other remedy, may be recovered by the Authority as a debt due to the Authority.

**65. CONFIDENTIALITY.**

(1) The Authority shall take all reasonable steps to protect, from unauthorised use or disclosure, information given to it in confidence or in connection with the performance of its functions or the exercise of its powers.

(2) For the purposes of Subsection (1), the disclosure of information as required and permitted by any law or court of competent jurisdiction is to be taken to be authorised use and disclosure of the information.

(3) For the purposes of Subsection (1), the disclosure of information by a person for the purposes of performing that person's functions as an employee of the Authority or as a member of the Board is to be taken to be authorised use and disclosure of the Information.

***Konebada Petroleum Park Authority***

I hereby certify that the above is a fair print of the ***Konebada Petroleum Park Authority Act 2008*** which has been made by the National Parliament.

Clerk of the National Parliament

I hereby certify that the ***Konebada Petroleum Park Authority Act 2008*** was made by the National Parliament on 26 November 2008, by an absolute majority in accordance with the ***Constitution***

Speaker of the National Parliament.

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