

No. 12 of 2021.

Kumul Consolidated Holdings Authorisation (Amendment) Act 2021.

Certified on : 15 OCT 2021



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Kumul Consolidated Holdings Authorisation (Amendment) Act 2021,

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No. of 2021.

AN ACT

entitled

Kumul Consolidated Holdings Authorisation (Amendment) Act 2021,

Being an Act -

- (a) to amend the *Kumul Consolidated Holdings Act 2002*; and
- (b) to provide for improved management of Kumul Consolidated Holdings and Majority State Owned Enterprises including with respect to powers and responsibilities, of the Minister, appointment of directors, reports and financial statements and requirements for annual plans and payments of dividends and to establish operating principles for the Kumul Consolidated Holdings and the Majority State Owned Enterprises that promote efficiency, profitability, environmental and social responsibility,

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. INTERPRETATION (AMENDMENT OF SECTION 2).

(1) Section 2 of the Principal Act is amended -

(a) in Subsection (1) -

- (i) by deleting the number and symbols “(1)”; and
- (ii) in the definition of “Chairman”, by inserting after the words “Section 11” the following:

“with respect to the Corporation and Section 12 with respect to Majority State Owned Enterprises as the context of the case may require”; and

- (iii) by repealing the definition of “Deputy Chairman”; and
- (iv) by repealing the definition of “Director” and replacing it with the following:

““Director” means a person appointed as a director, either for the Corporation under Section 11 or for a Majority State Owned Enterprise under Section 12 as the context of the case may require;”
and

- (v) by repealing the definition of “Gas Agreement”; and
- (vi) by repealing the definition of “IPBC Working Capital Fund”; and

(b) by inserting after the definition of “MRDC” the following:

““MSOE” means Majority State Owned Enterprise”; and

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(c) by repealing the definition of “Secretary” and replacing it with the following:

““Secretary” means the Secretary to the Board appointed under Section 10A;” and

(d) by repealing the definition of State Owned Enterprise and replacing it with the following:

““State Owned Enterprise” means -

- (a) a business enterprise in which the State or the Corporation, or both, hold interests in assets or share capital not exceeding 50% of any assets or any share capital; or
- (b) a subsidiary company of a Majority State Owned Enterprise.”; and

(e) by repealing Subsection (2).

2. APPLICATION TO THE STATE (AMENDMENT OF SECTION 3).

Section 3 of the Principal Act is amended -

(a) in the heading by deleting the words “TO THE STATE” and replacing it with the following:

“OF THE ACT”; and

(b) by inserting immediately after Subsection (1), the following new subsection:

“(1A) Notwithstanding any provision to the contrary in any other law, subordinate legislation or company constitution of a Majority State Owned Enterprise, this Act applies to all Majority State Owned Enterprises and in the event of any inconsistency between this Act and any other law, subordinate legislation or company constitution of a Majority State Owned Enterprise to which this Act applies, this Act prevails to the extent of the inconsistency.”.

3. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT 1995* (AMENDMENT OF SECTION 4).

Section 4 of the Principal Act is amended in Subsection (1) by inserting the word “Majority” before the words “State Owned Enterprise”.

4. NEW SECTION 4A.

The Principal Act is amended by inserting immediately after Section 4, the following new section:

“4A. APPLICATION OF *NATIONAL PROCUREMENT ACT 2018*.

The *National Procurement Act 2018* does not apply to the Corporation, the Trusts, the Majority State Owned Enterprises or to any other enterprise in which the Corporation, the Trusts or a Majority State Owned Enterprise holds any shares, property or other interest.”.

5. ESTABLISHMENT OF THE CORPORATION (AMENDMENT OF SECTION 6).

Section 6 of the Principal Act is amended -

(a) by repealing Subsection (4) and replacing it with the following:

“(4) Neither the Corporation nor any of the Corporation’s subsidiaries are entitled to claim the benefit of sovereign immunity in relation to its or their actions or assets.”; and

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(b) repealing Subsections (4A), (5), (6) and (7).

6. NEW SECTION 6A.

The Principal Act is amended by adding immediately after Section 6, the following new section:

“6A. GOVERNANCE OF THE CORPORATION.

(1) Subject to this Act, the Directors are responsible for the management and control of the business and affairs of the Corporation and the Trusts and for the performance of the functions and duties, and exercise of the powers and authorities of the Corporation under this Act.

(2) The Corporation shall pursue its objects and perform its functions and duties and exercise its powers and authorities -

- (a) independently of, and free from interference, direction or influence by the State, Ministers or members of the National Parliament or other provincial or local-level governments or officers of the public service other than as provided expressly in this Act 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.

(3) Notwithstanding Subsection (2), but subject to Subsection (4), the Minister may issue policy directions to the Corporation that are -

- (a) consistent 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; or
- (b) in accordance with Section 37 in relation to community service obligations.

(4) Any direction issued by the Minister contrary to Subsection (3) shall be of no effect and shall not bind the Corporation.”.

7. REPEAL AND REPLACEMENT OF SECTION 7.

The Principal Act is amended by repealing Section 7 and replacing it with the following new section:

“7. OBJECTIVES OF THE CORPORATION.

The objectives of the Corporation shall be -

- (a) to act as trustee of the Trusts and hold assets and liabilities that are vested in or acquired by the Corporation, on behalf of the State; and
- (b) to be as efficient and profitable as comparable businesses not owned by the State; and
- (c) to maximise the net worth of the Corporation and State’s investment in the Majority State Owned Enterprises; and
- (d) to ensure that Majority State Owned Enterprises -
 - (i) are efficient and profitable as comparable businesses not owned by the State; and
 - (ii) create value as measured by efficiency, profitability, environmental and social responsibility; and

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- (iii) operate on strict commercial principles, with full accountability, transparency and independence from political influence or instruction, except as provided in this Act; and
- (e) to enter into financial and other arrangements that, in the opinion of the Corporation, have as their objective, the advancement of the financial interests of the Majority State Owned Enterprises.”.

8. FUNCTIONS OF THE CORPORATION (AMENDMENT OF SECTION 8).

Section 8 of the Principal Act is amended in Subsection (2), Paragraphs (e), (f), (g) and (h) by inserting the word “Majority” before the words “State Owned Enterprise”.

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

Section 9 of the Principal Act is amended -

(a) in Subsection (3) -

- (i) by deleting the comma as appearing after “Subsection (1)”; and
- (ii) in Paragraph (b) by inserting the word “Majority” before the words “State Owned Enterprises”; and
- (iii) in Paragraph (c) by inserting the word “Majority” before the words “State Owned Enterprises”; and
- (iv) by repealing Paragraph (l) and replacing it with the following:
 - “(l) Subject to Section 12(12), appoint a member or members of the Corporation to be the member or members of the board of directors or other controlling or governing body of a Majority State Owned Enterprises provided such persons would not be disqualified from being a director under Section 12(7) and (8)”; and
- (v) in Paragraph (o) by inserting the word “Majority” before the words “State Owned Enterprises”; and
- (vi) in Paragraph (p) by inserting the word “Majority” before the words “State Owned Enterprises”; and

(b) in Subsection (4) by inserting the word “Majority” before the words “State Owned Enterprises”.

10. DELEGATION BY THE BOARD (AMENDMENT OF SECTION 10).

Section 10 of the Principal Act is amended by inserting after the word “delegate” the words “or revoke a prior delegation”.

11. NEW SECTION 10A.

The Principal Act is amended by inserting immediately after Section 10, the following new section:

“10A. SECRETARY TO THE CORPORATION.

A person occupying the substantive position of a chief legal officer or the general counsel or such other position description that represents the head of the legal division shall also serve as the Secretary to the Corporation on the same terms and conditions relating to the substantive position.”.

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12. NEW PART IIA.

The Principal Act is amended by inserting immediately after Part II the following new part:

**“PART IIA. - THE BOARD AND DIRECTORS OF THE CORPORATION
AND MAJORITY STATE OWNED ENTERPRISES.**

10B. APPLICATION OF PART IIA.

Part IIA applies to the Board and Directors of the Corporation and the Majority State Owned Enterprises as the context of the case requires.”.

13. REPEAL AND REPLACEMENT OF SECTION 11.

The Principal Act is amended by repealing Section 11 and replacing it with the following new section:

“11. DIRECTORS OF THE CORPORATION.

(1) The Chairman and Directors of the Corporation shall be appointed by the National Executive Council in accordance with this section and Schedule 3.

(2) The Board of the Corporation shall comprise of seven Directors as follows:

- (a) the Managing Director of the Corporation appointed under Section 23; and
- (b) six independent Directors.

(3) At least five of the Directors must be citizens of Papua New Guinea and not more than two of the Directors may be non-citizens of Papua New Guinea.

(4) For the purposes of Subsection (3), the nationality of the Managing Director shall not determine the number of citizen and non-citizen Directors on the Board.

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

(6) In determining the respective terms of Directors necessary to satisfy the requirements of Subsection (5), the National Executive Council shall seek to ensure that not more than half the number of the Directors retire in any 12 month period.

(7) In respect of the Board of the Corporation -

- (a) a person shall not be appointed to, or remain on the Board if that person -
 - (i) is not a fit and proper person as defined by Section 1; or
 - (ii) except in the case of the Managing Director, is an employee of the Corporation or any subsidiary of the Corporation; or
 - (iii) is an officer or employee of the public service; or
 - (iv) does not, as a minimum, hold an undergraduate degree bestowed by a recognised University; or

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- (v) is a member or a candidate for election as a member of the National Parliament, or a Provincial Government or Local-level Government or is a member of a Local-level Government Special Purposes Authority appointed under Section 42 of the ***Local-level Governments Administration Act 1997***; or
- (vi) is an office-holder, or candidate for election as an office-holder in a registered political party; and
- (b) the requirements of Subparagraph (a)(v) may be waived by the National Executive Council in respect of no more than one Director who otherwise satisfies the remaining requirements of Paragraph (a) and the person is so endorsed, for the purpose of the waiver, unanimously by all of the current Directors; and
- (c) except as may be provided in this Act or any other Act, a person who has been a member or who has been a candidate for election as referred to in Subparagraphs (a)(v) and (vi), shall not be appointed as a Director until 12 months have elapsed following that person ceasing to be a member or ceasing to be a candidate for election; and
- (d) a Director who intends to nominate to hold office as referred to in Subparagraphs (a)(v) and (vi) shall resign as a Director no later than six months prior to such nomination.

(8) A Director whose term has expired may continue to hold office as a Director and exercise all of the powers of a Director for a period not exceeding three months within which the National Executive Council may either appoint a new Director or re-appoint the same Director.

(9) The Directors shall be appointed by the National Executive Council strictly in accordance with the process and procedure relating to the appointment of Directors provided in Schedule 3.

(10) The Chairman shall be appointed as follows:

- (a) before any appointment is made, the Directors of the Corporation shall -
 - (i) identify those Directors from among the Board members having the qualifications and experience meeting the requirements specified in Subsection (7) and who is prepared to accept appointment as Chairman; and
 - (ii) notify the National Executive Council of the Director so identified and provide to the National Executive Council with details of his respective qualification and experience; and
- (b) the National Executive Council shall consider the nomination made by the Minister and -
 - (i) appoint that Director as Chairman; or
 - (ii) propose an alternative nominee from the Minister and document the rationale for his appointment as Chairman.

(11) A Director may be removed at any time by the National Executive Council after consulting with the Minister.

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(12) A Director is not a trustee of any of the Trusts but each Director shall subject to this Act, be individually and collectively responsible for the proper management of each of the Trusts as if the Corporation were a company under the ***Companies Act 1997***, and the Directors were the board of directors of that company acting as trustee.

(13) A Director shall, before carrying on his or her duties or exercising any power or authority under this Act, shall make a Declaration of Office and secrecy -

- (a) in the form set out in Schedule 1; and
- (b) in the presence of a duly qualified witness in accordance with the ***Oaths, Affirmations and Statutory Declarations Act*** (Chapter 317); and
- (c) deliver that Declaration to the Secretary.”.

14. REPEAL AND REPLACEMENT OF SECTION 12.

The Principal Act is amended by repealing Section 12 and replacing it with the following new section:

“12. DIRECTORS OF MAJORITY STATE OWNED ENTERPRISES.

(1) The Chairman and Directors of each Majority State Owned Enterprise shall be appointed by the National Executive Council on the recommendation of the Minister in accordance with this section and Schedule 4.

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

(3) At least five of the Directors must be citizens of Papua New Guinea and not more than two of the Directors may be non-citizens of Papua New Guinea.

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

(5) In determining the respective terms of Directors necessary to satisfy the requirements of Subsection (4), the National Executive Council shall ensure that not more than half the number of the Directors retire in any 12 month period.

(6) In respect of the Board of each Majority State Owned Enterprise -

- (a) a person shall not be appointed to, or remain on the Board if that person -
 - (i) is not a fit and proper person as defined by Section 1; or
 - (ii) is an employee of the Majority State Owned Enterprise or any subsidiary of the Majority State Owned Enterprise; or
 - (iii) is an officer or employee of the public service; or
 - (iv) does not, as a minimum, hold an undergraduate degree bestowed by a recognised University; or
 - (v) is a member or a candidate for election as a member of the National Parliament, Provincial Government, Local-level Government or is a member of a Local-level Government Special Purposes Authority appointed under Section 42 of the ***Local-level Governments Administration Act 1997***; or

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- (vi) is an office-holder or candidate for election as an office-holder in a registered political party; and
 - (b) the requirements of Paragraph (a)(iv) may be waived by the National Executive Council in respect of no more than one Director who otherwise satisfies the remaining requirements of Paragraph (a) and the person is so endorsed, for the purpose of the waiver, unanimously by all of the current Directors; and
 - (c) except as may be provided in this or any other Act, a person who has been a member or who has been a candidate for election as referred to in Paragraphs (a)(v) and (vi), shall not be appointed as a Director until 12 months have elapsed following that person ceasing to be a member or ceasing to be a candidate for election; and
 - (d) a Director who intends to nominate to hold office as referred to in Paragraphs (a)(v) and (vi) shall resign as a Director no later than six months prior to such nomination.
- (7) A Director whose term has expired may continue to hold office as a Director and exercise all of the powers of a Director for such period not exceeding three months within which the National Executive Council may either appoint a new Director or re-appoint the same Director.
- (8) The Directors shall be appointed by the National Executive Council strictly in accordance with the process and procedure relating to the appointment of Directors provided in Schedule 4.
- (9) The Chairman of a Majority State Owned Enterprise shall be appointed as follows:
- (a) before any appointment is made, the Corporation shall -
 - (i) identify those among the current Directors having the qualifications and experience meeting the requirements specified in Subsection (6) and who is prepared to accept appointment as Chairman; and
 - (ii) notify the Minister of the Director so identified and provide details of his qualification and experience; and
 - (b) the Minister shall consider the nomination made by the Corporation and -
 - (i) recommend to the National Executive Council the appointment of the Director as Chairman; or
 - (ii) propose an alternative nominee from the Board and document the rationale for his appointment as Chairman.
- (10) A Director of a Majority State Owned Enterprise may be removed at any time by the National Executive Council after consulting with the Minister.
- (11) A Director of a Majority State Owned Enterprise, before carrying on his or her duties or exercising any power or authority under this Act, shall make a declaration of office and secrecy-
- (a) in the form set out in Schedule 1; and
 - (b) in the presence of a duly qualified witness in accordance with the ***Oaths, Affirmations and Statutory Declarations Act*** (Chapter 317); and
 - (c) deliver that Declaration to the Secretary.

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(12) If for any reason there are no Directors on the Board of a Majority State Owned Enterprise, or the number of Directors on the Board of a Majority State Owned Enterprise is below the minimum number required for a quorum, the Corporation may, pursuant to Section 9(3)(f), immediately appoint from among its own members, sufficient interim Directors to the Board of that Majority State Owned Enterprise to constitute a quorum plus one, and such interim Directors hold office until the National Executive Council appoints new Directors pursuant to this Act.”.

15. MEETINGS OF THE BOARD (AMENDMENT OF SECTION 13).

Section 13 of the Principal Act is amended -

(a) in Subsection (5) by -

(i) repealing Paragraph (a) and replacing it with the following new paragraph:

“(a) a quorum is four Directors and the participation of the directors by telephone conference, video conferencing or by other audio visual means shall also be counted for the purposes of quorum”; and

(ii) repealing the word “present” in Paragraph (c); and

(b) in Subsection (6) by -

(i) repealing “; and” after the word “minutes” in Paragraph (b) and replacing it with a full stop; and

(ii) repealing Paragraph (c).

16. NEW SECTION 13A.

The Principal Act is amended by inserting immediately after Section 13, the following new section:

“13A. MEETINGS BY TELECOMMUNICATION.

Where the Directors are not all in attendance at one place and are holding a meeting through a system of communication and each of the Directors can hear and be heard by one another through telephone conference or can hear and see and be heard and seen by one another through video conference or any similar means of audio or audio-visual communication -

(a) the participating Directors shall, for the purpose of every provision of this Act concerning meetings of the Board, be taken to be assembled together at a meeting and to be present at that meeting; and

(b) the meeting shall be taken to be held at the place agreed to by the participating Directors so long as at least the Chairman and Managing Director are physically present at that place; and

(c) all proceedings of a meeting conducted in that manner shall be as valid and effective as if conducted at a meeting at which all of them were present.”.

17. VACATION OF OFFICE OF DIRECTOR (AMENDMENT OF SECTION 15).

Section 15 of the Principal Act is amended -

(a) in Subsection (1) by -

(i) repealing the words “other than an *ex-officio* member” after the word “Director”; and

(ii) repealing Paragraph (e) and replacing it with the following:

“(e) does not continue to be qualified to be a Director in accordance with either Section 11(7) or Section 12(6) as the context of the case requires.”; and

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- (b) in Subsection (2) by repealing -
 - (i) “an *ex-officio* member, or” as appearing after the word “other than”; and
 - (ii) the word “Minister” and replacing it with the words “National Executive Council”.

18. VACANCY OR DEFECT NOT TO AFFECT POWERS OR FUNCTIONS (AMENDMENT OF SECTION 16).

Section 16 of the Principal Act is amended by inserting the words “or the Majority State Owned Enterprise” after the word “Corporation”.

19. DUTIES OF DIRECTORS (AMENDMENT OF SECTION 17).

Section 17 of the Principal Act is amended by inserting the words “of the Corporation” after the words “the Directors”.

20. DISCLOSURE OF MATERIAL INTEREST (AMENDMENT OF SECTION 18).

Section 18 of the Principal Act is amended -

- (a) in Subsection (1) by inserting after the words “Corporation”, twice appearing, the words “or the Majority State Owned Enterprise”; and
- (b) in Subsection (3), Paragraphs (a) and (b) by inserting after the words “Corporation”, twice appearing, the words “or the Majority State Owned Enterprise”; and
- (c) by repealing Subsection (5) and replacing it with the following:

“(5) where, in accordance with this section, it is not possible to obtain a quorum of the Directors in any matter, it shall be referred by the Secretary to the Minister and the decision of the Minister on the matter -

- (a) shall be taken as the decision of the Board for all purposes under this Act; and
- (b) the notice containing the decision of the Minister issued by the Secretary shall be taken to be the minutes of the Board in relation to that matter.”.

21. AVOIDANCE OF TRANSACTIONS (AMENDMENT OF SECTION 19).

Section 19 of the Principal Act is amended -

- (a) in Subsection (1) by inserting after the words “the Corporation” where appearing, the words “or the Majority State Owned Enterprise”; and
- (b) in Subsection (3) -
 - (i) Paragraph (a) by inserting after the words “the Corporation”, the words “or the Majority State Owned Enterprise”; and
 - (ii) Paragraph (c) by inserting after the words “the Corporation”, the words “or the Majority State Owned Enterprise”.

22. REPEAL AND REPLACEMENT OF SECTION 20.

The Principal Act is amended by repealing Section 20 and replacing it with the following new section:

“20. REMUNERATION OF DIRECTORS.

- (1) The Minister shall, on the recommendation of the Corporation, approve a Director’s Remuneration Policy which shall govern the remuneration of the Directors.

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(2) The policy is valid from the date of approval and the Directors shall be paid such annual remuneration and reasonable attendance allowances as provided by the approved policy.

(3) The Directors shall not be entitled to any separation, termination benefits or allowances.

(4) The level of remuneration and allowances may be reviewed as part of the Board evaluation under Section 20A and such review shall be consistent with comparable non-executive Board appointments in companies managing similar enterprises in the private sector.

(5) For the purposes of Subsection (4), the Chairman of the Corporation shall, from time to time, cause a Board performance review to be conducted by an independent consultant appointed by the Corporation who shall, in consultation with the Corporation, recommend to the Minister an appropriate review of the annual remuneration for the Directors of the Corporation and Majority State Owned Enterprises.”.

23. NEW SECTION 20A.

The Principal Act is amended by inserting immediately after Section 20, the following new section:

“20A. EVALUATION OF THE BOARD OF THE CORPORATION AND MAJORITY STATE OWNED ENTERPRISES.

(1) The Minister shall review the performance of the Directors of the Corporation and of the Majority State Owned Enterprises individually and collectively as a Board at least every two years.

(2) The Corporation shall provide advice to the Minister on the performance of the Directors of the Majority State Owned Enterprises.

(3) The performance of each Board as a whole must be reviewed against the performance of the Majority State Owned Enterprise in relation to -

- (a) the Majority State Owned Enterprises objectives in its Statement of Corporate Objectives; and
- (b) the efficiency and effectiveness (financial and otherwise) of its commercial operations; and
- (c) the compliance with all applicable policies, laws and regulations.

(4) The performance of each Director must be reviewed against, at a minimum, the following factors:

- (a) the contribution of the Director to Board decisions and discussions; and
- (b) attendance and responsiveness; and
- (c) compliance with Code of Conduct and Board procedural rules and all applicable policies, laws and regulations.

(5) For the purposes of this section, each Director shall assess his or her performance in consultation with his or her Chairman, and the Chairman shall assess his or her performance in consultation with the Corporation, who will also seek the views of the respective Majority State Owned Enterprises Directors.

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(6) The Chairman of the Corporation shall assess his or her performance in consultation with the Minister, who will also seek the views of the Directors of the Corporation.

(7) The Corporation may appoint an independent consultant to facilitate the evaluation of the performance of the Directors and Board of the Corporation and Majority State Owned Enterprises.”.

24. APPOINTMENT OF OFFICERS (AMENDMENT OF SECTION 29).

Section 29 of the Principal Act is amended in Subsection (4) by inserting immediately after the words “officers or staff”, the words “or a Majority State Owned Enterprise or its Directors, officers or staff”.

25. INITIAL OFFICERS (AMENDMENT OF SECTION 30).

Section 30 of the Principal Act is amended in Subsection (4) by repealing the words “and not out of the IPBC Working Capital Fund or other funds held by the Corporation” as appearing after the words “the State”.

26. ESTABLISHMENT OF TRUSTS (AMENDMENT OF SECTION 31).

Section 31 of the Principal Act is amended in Subsection (2) by inserting the word “Majority” before the words “State Owned Enterprises”.

27. REPEAL AND REPLACEMENT OF PART VI.

The Principal Act is amended by repealing Part VI and replacing it with the following new Part:

**“PART VI. - CORPORATE PLAN, COMMUNITY SERVICE OBLIGATIONS,
FINANCE AND AUDIT OF THE CORPORATION.**

Division 1. - Corporate Plan and Statement of Corporate Objectives.

33. STATEMENT OF CORPORATE OBJECTIVES.

(1) The Corporation must have, at the start of each financial year, a Statement of Corporate Objectives that applies to that financial year and to the following two financial years.

(2) The Statement of Corporate Objectives shall include, but not be limited, to the following information:

- (a) the objectives and business goals of the Corporation; and
- (b) the main undertakings of the Corporation; and
- (c) the nature and scope of any new activities to be undertaken; and
- (d) a summary of the strategies of the Corporation for achieving its objectives and business goals; and
- (e) the accounting policies to be applied in the financial reports of the Corporation; and
- (f) the performance targets and other measures by which the performance of the Corporation may be assessed in relation to the stated objectives; and
- (g) a summary balance sheet and profit and loss statement; and
- (h) a forecast of the asset, liability and cash flow positions of the Corporation and the Trusts; and
- (i) a statement of the current or anticipated borrowing of the Corporation; and

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- (j) capital investments and their proposed procurement method; and
- (k) the proposed dividend distribution, detailing the rationale for any retained earnings; and
- (l) a description of any community service obligations and its impact on the forecasted financial outcomes of the Corporation; and
- (m) any other matter that the Minister directs to be included in the Statement of Corporate Objectives.

(3) Notwithstanding Subsection (2), the Minister may prescribe matters which the Corporation may exclude from its Statement of Corporate Objectives.

(4) The Statement of Corporate Objectives shall not disclose any information which the Corporation considers may, if disclosed -

- (a) disadvantage or cause damage to the Corporation directly or indirectly; or
- (b) enable another person, directly or indirectly, to gain an advantage.

(5) The Statement of Corporate Objective must be approved by the Board of the Corporation and the National Executive Council in accordance with Section 34.

(6) Within 30 days of the approval of the Statement of Corporate Objectives by the National Executive Council, it must be publicly available.

34. PROCESS FOR APPROVAL OF STATEMENT OF CORPORATE OBJECTIVE.

(1) The Board of the Corporation -

- (a) shall give the Minister a final draft of the Statement of Corporate Objectives not less than two months before the start of the financial year to which it will apply; and
- (b) shall not approve the Statement of Corporate Objectives without first taking into account any comment by the Minister in relation to the draft Statement of Corporate Objectives; and
- (c) shall give the Minister a copy of the Statement of Corporate Objectives within 10 working days of approving it.

(2) The Corporation must provide a copy of its Statement of Corporate Objectives to the Minister for Treasury within 14 days after the Corporation is notified of its approval by the Minister.

(3) The Corporation may amend its Statement of Corporate Objectives at any time on the condition that the Board -

- (a) must give the Minister a final draft of the amendment not less than two months before the Board approves it; and
- (b) must not approve or adopt the amendment without first taking into account any comment by the Minister in relation to the draft amendment; and
- (c) must give the Minister a copy of the amendment within 10 working days of approving it.

(4) The Corporation shall provide a copy of its amended Statement of Corporate Objective to the Minister for Treasury within 14 days after the Corporation had been notified of its approval by the Minister.

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35. CORPORATE PLAN.

(1) The Corporation shall have, at the start of each financial year, a Corporate Plan that applies to that financial year and to the following two financial years.

(2) The Corporate Plan shall provide details of the operational strategies that will be provided to achieve the targets set out in the Statement of Corporate Objectives.

(3) The Corporate Plan shall be consistent with the Statement of Corporate Objectives and shall be prepared by the Board of the Corporation concurrently.

(4) The Corporate Plan shall be prepared in accordance with guidelines and templates issued by the Board of the Corporation and must include but not limited to the following information:

- (a) key financial and non-financial performance targets; and
- (b) forecasted balance sheet, income and cash flow statements, detailing proposed expenditures, borrowings and payment of dividends; and
- (c) forecasted acquisition of assets; and
- (d) proposals for the sale, rehabilitation and restructure of assets; and
- (e) identification and costing of any community service obligations to be provided at the direction of or on behalf of the State; and
- (f) details of proposed debt financing or refinancing; and
- (g) human resource strategy, including workforce restructuring (if any); and
- (h) details of proposed consulting expenditures; and
- (i) identification of key risks to the achievement of the Corporation's performance targets and proposed risk mitigation measures; and
- (j) analysis of market in which the Corporation is operating, including assessment of competitive position and industry trends; and
- (k) details of proposed profit distribution, including dividend distribution and rationale for retained earnings.

(5) The Corporate Plan must be approved by the National Executive Council in accordance with Section 36.

36. PROCESS FOR APPROVAL OF CORPORATE PLAN.

(1) The Board of the Corporation -

- (a) shall give the Minister a final draft of the Corporate Plan not less than two months before the start of the financial year to which it will apply; and
- (b) shall not approve the Corporate Plan without first taking into account any comment by the Minister in relation to the draft Corporate Plan; and
- (c) shall give the Minister a copy of the Corporate Plan within 10 working days of approving it.

(2) The Corporation may amend its Corporate Plan at any time on the condition that, the Board -

- (a) must give the Minister a final draft of the amendment not less than two months before the Board approves it; and
- (b) must not approve or adopt the amendment without first taking into account any comment by the Minister in relation to the draft amendment; and
- (c) must give the Minister a copy of the amendment within 10 working days of approving it.

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(3) The Corporation shall not incur any expenditure, contract any liability or acquire or dispose of any assets during a financial year unless it is in accordance with the Corporate Plan.

36A. EFFECT OF APPROVAL OF PLANS.

(1) The plans referred to in Sections 33 and 35 are subject to the approval of the National Executive Council and are not valid unless and until such approval has been granted.

(2) The plans, referred to in Subsection (1), are valid from the commencement of the period to which it relates notwithstanding the date of approval and shall be binding on the Corporation in all aspects from the commencement of the accounting period to which it relates.

(3) Any changes to the plans referred to in Sections 33 and 35 requires the further approval of the National Executive Council and such changes are not valid unless and until such approval has been granted.

36B. PERMITTED EXPENDITURE.

(1) The Corporation shall not incur any expenditure, acquire or dispose of any assets during a financial year unless -

- (a) the expenditure, acquisition or disposal of assets is made in accordance with the Corporate Plan referred to in Section 35; or
- (b) the expenditure, acquisition or disposal of assets is approved by the National Executive Council; or
- (c) the total expenditure and value of acquisition of assets in any financial year incurred by the Corporation does not exceed K10,000,000.00 or such other limit as may be determined by the National Executive Council and advised to the Corporation from time to time; or
- (d) the total value of disposal of assets in any financial year incurred by the Corporation does not exceed K10,000,000.00 or such other limit as may be determined by the National Executive Council and advised to the Corporation from time to time.

(2) Any transaction in which the Corporation incurs expenditure or acquires or disposes of assets in breach of this Section 36B is void and of no effect.

36C. PAYMENT OF DIVIDENDS.

Subject to the Corporate Plan under Section 35, the Corporation may from time to time, declare profit distribution including dividends to the State in accordance with the State Dividend Policy.

Division 2. - Ministerial policy proposals and community service obligations.

37. MINISTERIAL POLICY PROPOSALS AND COMMUNITY SERVICE OBLIGATIONS.

- (1) The Minister may propose, in writing, to the Corporation to -
- (a) provide a specified service or perform a specified activity; or
 - (b) cease to provide a specified service or perform a specified activity.

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(2) The Corporation shall, within one month after receiving the proposal, give the Minister a notice in which it -

- (a) agrees to give effect to the proposal; or
- (b) states, with reasons, that giving effect to the proposal would be inconsistent with the objects of the Corporation to be as efficient and profitable as comparable businesses not owned by the State.

(3) If the Corporation gives the Minister a notice under Subsection (2)(b), the Minister and the Corporation shall enter into good faith negotiations to agree on measures to be taken to minimise the impact of the proposal on the efficiency and profitability of the Corporation.

(4) If an agreement is reached under Subsection (3), the arrangements for giving effect to the Minister's proposal is considered a Community Service Obligation and -

- (a) must be reflected in the Corporate Plan and Statement of Corporate Objectives of the Corporation; and
- (b) is binding only if incorporated in an agreement that complies with Section 38.

38. CONTENT OF COMMUNITY SERVICE OBLIGATION AGREEMENT.

(1) An agreement between the Minister and the Corporation for a community service obligation -

- (a) must be in writing; and
- (b) may include provision for funding or other resources from the State to the Corporation; and
- (c) if it provides for the Corporation to provide goods or services, the agreement must -
 - (i) specify the goods or services, including any particular quantities; and
 - (ii) specify an estimate of the annual total cost to the Corporation for providing the goods or services, and an estimate of the annual total revenue to be received by the Corporation for doing so; and
 - (iii) specify how the performance of the Corporation in providing the goods or services will be monitored and assessed; and
 - (iv) specify the funding or other resources to be provided by the State under the agreement.

(2) Notwithstanding Subsection (1), the agreement may include any other matter, which is consistent with the objects of the Corporation under Section 7 that is agreed between the Minister and the Corporation.

Division 3. - Finance and accounts.

39. PROFIT AND LOSSES OF THE CORPORATION.

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

40. BANK ACCOUNTS AND CHEQUES.

(1) The Corporation shall open and maintain accounts within the country or elsewhere with such bank or banks as it may from time to time determine to be required for its purposes.

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(2) Subject to this Act, the Corporation shall pay all moneys received by it into an account referred to in Subsection (1).

(3) Cheques or any other negotiable instrument drawn on any bank account of the Corporation shall be signed in the manner determined by the Corporation from time to time.

41. ACCOUNTS AND RECORDS.

(1) The Corporation shall keep proper accounts of its transactions and affairs and shall do all things to ensure that all payments out of its moneys are correctly made and properly authorised and that adequate control is maintained over its assets, or assets in its custody and over the incurring of liabilities by it.

(2) The accounts and records required by Subsection (1) shall be kept in accordance with the generally accepted accounting practice applied in commercial practice or as otherwise directed by the Minister, provided such direction relates only to an increase to the frequency or details contained in such recording and their subsequent reporting to the Minister or the Corporation as the case may be.

(3) The moneys, assets, liabilities, accounts and records of the Corporation in each of its various capacity under this Act shall be kept separate from those of the Corporation in its other capacities, except as authorised by this Act.

(4) Without limiting Subsection (1), the Board of the Corporation shall cause the Corporation's accounts and records to be kept so as to -

- (a) correctly record and explain the transactions of the Corporation; and
- (b) enable the financial position of the Corporation to be determined with reasonable accuracy; and
- (c) enable the Directors to ensure that the financial statements of the Corporation comply with Section 43; and
- (d) enable the financial statements of the Corporation to be readily and properly audited in compliance with Section 42.

(5) The Corporation shall keep its accounts and records required under this section at its registered office or at some other place in the country as approved by the Board of the Corporation.

(6) Where the Board fails to comply with the requirements of this section, every Director commits an offence.

Penalty: A fine not exceeding K1,000.00

Division 4. - Audit and financial reports.

42. AUDIT.

(1) Without limiting the Auditor General's powers and functions under the *Audit Act 1989*, the Auditor-General shall, prior to the expiry of the period specified in Section 43(1) -

- (a) cause an inspection and audit of the accounts and records of financial transactions of the Corporation and the Trusts and records relating to the assets of the Corporation and the Trusts and assets in the Corporation's custody; and

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- (b) promptly draw the attention of the Minister and the Corporation to any matter disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify him doing so.
- (2) The Auditor-General may, in his discretion, dispense with any part of the detailed inspection or audit of any accounts or records referred to in Subsection (1).
- (3) The Auditor-General shall, at least once in each year, report to the Minister the results of the inspection and audit carried out in Subsection (1) and the particulars of any discretion exercised under Subsection (2).
- (4) For purposes of assisting the Auditor-General in the timely completion of an inspection and audit of the accounts and records of financial transactions of the Corporation under this section, the Auditor-General shall appoint a registered auditor who shall act under the direction of the Auditor-General and on the terms and conditions determined by the Auditor-General as a person authorised by the Auditor-General for the purposes of this section.
- (5) For purposes of Subsection (4), the Auditor-General shall, prior to the commencement of the three year period referred to in the Corporate Plan of the Corporation, appoint a registered auditor to audit the accounts and records of the Corporation, for the duration of the Corporate Plan.
- (6) The registered auditor appointed by the Auditor-General shall, upon completion of an inspection and audit under this section, furnish the audited financial statements to the Board of the Corporation and the Auditor-General.
- (7) The Auditor-General or a person authorised by the Auditor-General is entitled at all reasonable times to full and free access to all accounts, records, documents or papers of the Board and of the Trusts relating directly or indirectly to the receipt of payment of moneys by it, or to the acquisition, receipt, custody or disposal of assets by it.
- (8) The Auditor-General or a person authorised by the Auditor-General may make copies of, or take extracts from any such accounts, records, documents or papers.
- (9) The Auditor-General or a person authorised by the Auditor-General may require any person to furnish him with such information in that person's possession or control as the Auditor-General or person authorised by the Auditor-General thinks necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.
- (10) A person who obstructs the Auditor-General, or a person authorised by the Auditor-General in the performance of his duties under Subsection (7) is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

43. REPORTS AND FINANCIAL STATEMENTS.

- (1) The Corporation shall, as soon as practicable after 31 December each year, being the Corporation's balance date, or such other date as the Corporation adopts as its balance date, but within three months of that date, prepare and furnish to -
- (a) the Minister; and

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(b) the National Executive Council, an annual report on the operations of the Corporation and the Trusts for the year ended 31 December preceding or such other date as the Corporation adopts as its balance date, together with its audited financial statements in respect of that accounting period.

(2) Financial statements under Subsection (1) shall be in the form and in accordance with generally accepted accounting practice.

(3) 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 Directors of the Corporation shall add such information and explanations as will give a true and fair view of those matters.

(4) Concurrent to furnishing financial statements in accordance with Subsections (1) and (2), the Board shall also submit the financial statements to the Auditor-General who shall report to the National Parliament in accordance with Part II of the *Audit Act 1989*, and where such report has not been completed prior to the expiry of the period specified in Subsection (1), the unaudited financial statements shall be furnished in accordance with Subsection (1) and be clearly marked as “unaudited” and the audited financial statements shall then be furnished as soon as it is available.

(5) Except as provided in this Act, the report of the Auditor-General shall be included in any reproduction of the report or financial statements for publication or other purpose.

(6) The first annual report and audited financial statement shall be for that part of the financial year commencing on the commencement date until 31 December following.

(7) The Minister shall cause the annual report, audited financial statements and the report from the Auditor-General to be published and presented to the National Parliament at the next sitting after receipt by the Minister.

(8) After presentation to the National Parliament of the annual report and audited financial statement by the Minister referred to in Subsection (7), the Corporation shall cause the annual report and audited financial statements, together with the report from the Auditor-General -

- (a) to be posted and published in the Corporation’s official website; and
- (b) published in a newspaper and circulated nationally.

(9) Management accounts for the most recent calendar quarter and the financial year to date prepared to professional standards and rolling one year financial projections for the Corporation shall be provided to the departmental head of the department responsible for treasury matters within 30 days of the end of each calendar quarter commencing in respect of the first calendar quarter ending 31 December.

Division 5. - Borrowing and lending powers.

44. BORROWING POWERS OF THE CORPORATION.

(1) The Corporation, both in its capacity as trustee of each of the Trusts or otherwise, has the power to borrow or raise money or enter into any other financial arrangements either in Papua New Guinea or elsewhere as a borrower or guarantor or as a party in the nature of a borrower or guarantor or as an acquirer of financial accommodation or in any other related capacity, on terms approved by the National Executive Council.

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

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

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

(5) Upon approval, the borrowing proposal is valid from the commencement of the period to which it relates.

(6) Any changes to a borrowing proposal approved by the National Executive Council pursuant to Subsection (4) requires the further approval of the National Executive Council.

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

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

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

45. LENDING POWERS OF THE CORPORATION.

(1) The Corporation has in the attainment of its objects and the discharge of its functions under this Act, 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 the Corporation 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 Majority 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.

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Division 6. - Tax and duties.

46. LIABILITY TO TAXATION AND DUTIES.

(1) The Corporation is not liable to pay taxes, duties, fees, charges, rates, excise or other imposts of any kind charged or imposed under any law except for a law enacted specifically to amend or repeal this section.

(2) The transfer to or vesting in the Corporation of any assets or liabilities, is not liable for any taxes, duties, fees, charges, rates, excise or any other imposts of any kind charged or imposed under any law except for any law enacted specifically to amend or repeal this section.

(3) All suppliers of goods or services to the Corporation shall, whether in its capacity as trustee of any of the Trusts or otherwise, be liable to goods and services tax imposed under the *Goods and Services Tax Act 2003* at a rate of zero percent.”.

28. REPEAL AND REPLACEMENT OF PART VIA.

The Principal Act is amended by repealing Part VIA and replacing it with the following new part:

“PART VIA. - MAJORITY STATE OWNED ENTERPRISES.

Division 1. - Objectives, Statement of Corporate Objectives and Corporate Plan.

46A. OBJECTIVES OF THE MAJORITY STATE OWNED ENTERPRISES.

The objective of the Majority State Owned Enterprises shall be -

- (a) to maximise the net worth of the Majority State Owned Enterprises; and
- (b) to ensure that the Majority State Owned Enterprises -
 - (i) are efficient and profitable as comparable businesses not owned by the State; and
 - (ii) create value as measured by efficiency, profitability, environmental and social responsibility; and
 - (iii) on strict commercial principles, with full accountability, transparency and independence from political influence or instruction, except as provided in this Act; and
- (c) to pay dividend to the shareholder.

46B. STATEMENT OF CORPORATE OBJECTIVES OF MAJORITY STATE OWNED ENTERPRISES.

(1) Each Majority State Owned Enterprise must have, at the start of each financial year, a Statement of Corporate Objectives that applies to that financial year and to the following two financial years.

(2) The Statement of Corporate Objectives shall include, but not be limited to the following information about the Majority State Owned Enterprise:

- (a) the objectives and business goals; and
- (b) the main undertakings; and
- (c) the nature and scope of any new activities to be undertaken; and

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- (d) a summary of the strategies for achieving its objectives and business goals; and
- (e) the accounting policies to be applied in the financial reports; and
- (f) the performance targets and other measures by which the performance may be assessed in relation to the stated objectives; and
- (g) a summary balance sheet and profit and loss statement; and
- (h) a forecast of the asset, liability and cash flow forecast and positions; and
- (i) a statement of the current or anticipated borrowing; and
- (j) capital investments and their proposed procurement method; and
- (k) the proposed dividend distribution detailing the rationale for any retained earnings and provisions; and
- (l) a description of any community service obligations and its impact on the forecasted financial outcomes of the Majority State Owned Enterprise; and
- (m) any other matter that the Corporation directs to be included in the Statement of Corporate Objectives.

(3) Notwithstanding Subsection (2), the Corporation may prescribe matters which the Majority State Owned Enterprise may exclude from its Statement of Corporate Objectives.

(4) The Statement of Corporate Objectives must not disclose any information which the Majority State Owned Enterprise considers may, if disclosed -

- (a) disadvantage or cause damage to the Majority State Owned Enterprise, directly or indirectly; or
- (b) enable another person, directly or indirectly, to gain an advantage.

(5) The Statement of Corporate Objectives must be approved by the National Executive Council in accordance with Section 46C.

(6) Within 30 days of the approval of the Statement of Corporate Objectives by the National Executive Council, it must be made publicly available.

(7) Each Majority State Owned Enterprise shall, no later than one month after the end of each quarter in the financial year, submit to the Corporation for review a quarterly report of the performance of the plan referred to in Subsection (2) in the format prescribed by the Corporation.

46C. PROCESS FOR APPROVAL OF STATEMENT OF CORPORATE OBJECTIVES.

- (1) The Board of a Majority State Owned Enterprise -
 - (a) shall give the Corporation a final draft of the Statement of Corporate Objectives not less than two months before the start of the financial year to which the Statement of Corporate Objective will apply; and
 - (b) shall not approve the Statement of Corporate Objectives without first taking into account any comment by the Corporation in relation to the draft Statement of Corporate Objectives; and
 - (c) shall give the Corporation a copy of the Statement of Corporate Objectives within 10 working days of approving it.

(2) A Majority State Owned Enterprise shall provide a copy of its Statement of Corporate Objectives to the Minister within 14 days after its approval by the Corporation.

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- (3) The Majority State Owned Enterprise may amend its Statement of Corporate Objectives at any time, provided the Board -
- (a) gives the Corporation a final draft of the amendment not less than two months before the board approves it; and
 - (b) takes into account any comment by the Corporation in relation to the draft amendment; and
 - (c) gives the Corporation a copy of the amendment within 10 working days of approving it.
- (4) The Corporation must provide a copy of its amended Statement of Corporate Objectives to the Minister within 14 days after its approval by the Corporation.

46D. CORPORATE PLAN.

- (1) The Majority State Owned Enterprise must have, at the start of each financial year, a Corporate Plan that applies to that financial year and to the following two financial years.
- (2) The Corporate Plan shall provide details of the operational strategies that will be provided to achieve the targets set out in the Statement of Corporate Objectives.
- (3) The Corporate Plan must be consistent with the Statement of Corporate Objective and must be prepared by the Board of the Majority State Owned Enterprise concurrently.
- (4) The Corporate Plan must be prepared in accordance with the guidelines and templates issued by the Board of the Corporation, if any and include, but not be limited to, the following information:
- (a) key financial and non-financial performance targets; and
 - (b) forecasted balance sheet, income and cash flow statements, detailing proposed expenditures, borrowings and payment of dividends; and
 - (c) forecasted acquisition of assets; and
 - (d) proposals for the sale, rehabilitation or restructure of assets; and
 - (e) identification and costing of any community service obligations to be provided at the direction of or on behalf of the State; and
 - (f) details of proposed debt financing or refinancing; and
 - (g) human resource strategy, including workforce restructuring (if any); and
 - (h) details of proposed consulting expenditures; and
 - (i) identification of key risks to the achievement of the Majority State Owned Enterprises performance targets and proposed risk mitigation measures; and
 - (j) analysis of market in which the Majority State Owned Enterprise is operating, including assessment of competitive position and industry trends; and
 - (k) details of proposed profit distribution, including dividend distribution and rationale for retained earnings.
- (5) The Corporate Plan must be approved by the National Executive Council in accordance with Section 46E.
- (6) Each Majority State Owned Enterprise shall, no later than one month after the end of each quarter in the financial year, submit to the Corporation for review, a quarterly report on the performance of the plan referred to in Subsection (4) in the format prescribed by the Corporation.

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46E. PROCESS FOR APPROVAL OF CORPORATE PLAN.

- (1) The Board of the Majority State Owned Enterprise -
 - (a) must give the Corporation a final draft of the Corporate Plan not less than two months before the start of the financial year to which it will apply; and
 - (b) must not approve the Corporate Plan without first taking into account any comments by the Corporation in relation to the draft Corporate Plan; and
 - (c) must give the Corporation a copy of the Corporate Plan within 10 working days of approving it.

- (2) The Majority State Owned Enterprise may amend its Corporate Plan at any time, provided the Board -
 - (a) gives the Corporation a final draft of the amendment not less than 2 months before the Board approves it; and
 - (b) takes into account any comment by the Corporation in relation to the draft amendment; and
 - (c) gives the Corporation a copy of the amendment within 10 working days of approving it.

- (3) The Majority State Owned Enterprise shall not incur any expenditure, contract any liability, or acquire or dispose of any assets during a financial year unless it is in accordance with the Corporate Plan.

46F. EFFECT OF APPROVAL OF PLANS.

- (1) The plans referred to in Sections 46B and 46D are subject to the approval of the National Executive Council and are not valid unless and until such approval is granted.

- (2) The plans, as referred to in Subsection (1), are valid as from the commencement of the period to which the plan relates, notwithstanding the date of that approval and shall be binding on the Majority State Owned Enterprise in all aspects from the commencement of the accounting period to which it relates.

- (3) Any changes to the plans referred to in Subsection (1) requires further approval of the National Executive Council and such changes are not valid unless and until such approval is granted.

Division 2. - Ministerial policy proposals and community service obligations.

46G. MINISTERIAL POLICY PROPOSALS AND COMMUNITY SERVICE OBLIGATIONS.

- (1) The Minister may propose, in writing, to a Majority State Owned Enterprise to -
 - (a) provide a specified service or perform a specified activity; or
 - (b) cease to provide a specified service or perform a specified activity.

- (2) The Majority State Owned Enterprise must, within one month after receiving the proposal, give the Minister a notice in which the Majority State Owned Enterprise -
 - (a) agrees to give effect to the proposal; or
 - (b) states, with reasons, that giving effect to the proposal would be inconsistent with the objects of the Majority State Owned Enterprise to be as efficient and profitable as other comparable businesses not owned by the State.

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(3) If the Majority State Owned Enterprise gives the Minister a notice under Subsection (2)(b), the Minister and the Majority State Owned Enterprise must enter into good faith negotiations to agree on measures to be taken to minimise the impact of the proposal on the efficiency and profitability of the Majority State Owned Enterprise.

(4) If an agreement is reached under Subsection (3), the arrangements for giving effect to the Minister's proposal is considered a Community Service Obligation and -

- (a) must be reflected in the Corporate Plan and Statement of Corporate Objective of the Majority State Owned Enterprise; and
- (b) is binding only if incorporated in an agreement that complies with Section 46H.

46H. CONTENT OF COMMUNITY SERVICE OBLIGATION AGREEMENT.

(1) An agreement between the Minister and the Majority State Owned Enterprise for a community service obligation -

- (a) must be in writing; and
- (b) may include provisions for funding or other resources from the State to the Majority State Owned Enterprise; and
- (c) if it provides for the Majority State Owned Enterprise to provide goods or services, the agreement must -
 - (i) specify the goods or services, including any particular quantities; and
 - (ii) specify an estimate of the annual total cost to the Majority State Owned Enterprise for providing the goods or services, and an estimate of the annual total revenue to be received by the Majority State Owned Enterprise for doing so; and
 - (iii) specify how the performance of the Majority State Owned Enterprise in providing the goods or services will be monitored and assessed; and
 - (iv) specify the funding or other resources to be provided by the State under the agreement.

(2) Notwithstanding Subsection (1), the agreement may include any other matter, which is consistent with the objectives of the Majority State Owned Enterprise agreed between the Minister and the Majority State Owned Enterprise.

Division 3. - Approval of certain contracts and permitted expenditure.

46I. APPROVAL OF CERTAIN CONTRACTS.

(1) A Majority State Owned Enterprise shall not, except with the approval of the Minister upon the recommendation of the Managing Director of the Corporation, enter into any contract involving the payment or receipt of an amount exceeding K3,000,000.00.

(2) Notwithstanding Subsection (1), a Majority State Owned Enterprise may enter into a contract involving the payment or receipt of an amount exceeding K3,000,000.00 but not exceeding K10,000,000.00 if -

- (a) such a payment or receipt is in accordance with the Corporate Plan of the Majority State Owned Enterprise approved under Sections 46D and 46E; and
- (b) such payments or receipts has been approved by the Managing Director and reported to the Board of the Corporation.

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(3) Notwithstanding Subsections (1) and (2), any contracts relating to the engagement or retainer of lawyers, accountants and consultants to a value exceeding K300,000.00 shall be approved by the Managing Director of the Corporation on the recommendation of the Board of the Majority State Owned Enterprise.

(4) Any contract entered into by a Majority State Owned Enterprise in breach of Subsections (1), (2) and (3) is void and of no effect.

(5) For the avoidance of doubt, the requirements of this section apply to a Majority State Owned Enterprise in addition to any obligations imposed on the Majority State Owned Enterprise under Section 46J.

46J. PERMITTED EXPENDITURE BY MAJORITY STATE OWNED ENTERPRISES.

(1) A Majority State Owned Enterprise shall not incur any expenditure, or acquire or dispose of any assets during a financial year if -

- (a) the expenditure or acquisition or disposal of assets is not made in accordance with the Corporate Plan referred to in Section 46D; or
- (b) the expenditure or acquisition or disposal of assets is not approved by the Corporation.

(2) Subject to any transaction in which a Majority State Owned Enterprise incurs expenditure or acquires or disposes of assets in breach of this Section 46J(1) is void and of no effect.

Division 4. - Accounts and records.

46K. ACCOUNTS AND RECORDS.

(1) A Majority State Owned Enterprise shall cause to be kept proper accounts of its transactions and affairs and shall do all things to ensure that all payments out of its moneys are correctly made and properly authorised and that adequate control is maintained over its assets, or assets in its custody and over the incurring of liabilities by it.

(2) The accounts and records required by Subsection (1) shall be kept in accordance with the generally accepted accounting practice as provided under the *Companies Act 1997* or as otherwise directed by the Corporation, provided such direction relates only to an increase to the frequency or details contained in such recording and their subsequent reporting to the Minister or the Corporation as the case may be.

(3) Without limiting Subsection (1), the Board of the Majority Stated Owned Enterprise shall cause its accounts and records to be kept to -

- (a) correctly record and explain the transactions; and
- (b) enable its financial position to be determined with reasonable accuracy; and
- (c) enable the Directors to ensure that the financial statements comply with Section 46M of this Act; and
- (d) enable the financial statements to be readily and properly audited in compliance with Section 46L of this Act.

(4) A Majority State Owned Enterprise shall keep its accounts and records required under this section at its registered office or at some other place in the country as approved by the Board.

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(5) Where the Board of the Majority State Owned Enterprise fails to comply with the requirements of this section, every Director of the Board commits an offence.

Penalty: A fine not exceeding K1,000.00.

Division 5. - Audit and financial reports.

46L. AUDIT.

(1) Without limiting his powers and functions under the *Audit Act 1989*, the Auditor-General shall, prior to the expiry of the period specified in Section 46M(1) -

- (a) to inspect and audit the accounts and records of financial transactions of the Majority State Owned Enterprises and records relating to the assets owned by them or in their custody; and
- (b) promptly draw the attention of the Minister and the Corporation to any matter disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify him doing so.

(2) The Auditor-General may, in his discretion, dispense with any part of the detailed inspection or audit of any accounts or records referred to in Subsection (1).

(3) The Auditor-General shall, at least once in each year, report to the Minister the results of the inspection and audit carried out in Subsection (1) and the particulars of any discretion exercised under Subsection (2).

(4) For purposes of assisting the Auditor-General in the timely completion of an inspection and audit of the accounts and records of financial transactions of the Majority State Owned Enterprises under this section, the Auditor-General shall appoint a registered company auditor who shall act under the direction of the Auditor-General and on the terms and conditions determined by the Auditor-General as a person authorised by the Auditor-General for the purposes of this section.

(5) For purposes of Subsection (4), the Auditor-General shall, prior to the commencement of the three year period referred to in the Corporate Plan of a Majority State Owned Enterprise, appoint a registered company auditor to audit the accounts and records of the Majority State Owned Enterprises for the duration of the Corporate Plan.

(6) The auditor appointed by the Auditor-General shall, upon completion of an inspection and audit under this section, furnish the audited financial statements to the Board of the Majority State Owned Enterprise, the Corporation and the Auditor-General.

(7) The Auditor-General or a person authorised by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Majority State Owned Enterprise relating directly or indirectly to the receipt of payment of moneys by it, or to the acquisition, receipt, custody or disposal of assets by it.

(8) The Auditor-General or a person authorised by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

(9) The Auditor-General or a person authorised by him may require any person to furnish him with such information in his possession or control as the Auditor-General or authorised person thinks necessary for the purposes of the functions of the Auditor-General under this Act and the person shall comply with the requirement.

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(10) A person who fails to comply with Subsection (9) is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

46M. REPORTS AND FINANCIAL STATEMENTS.

(1) A Majority State Owned Enterprise shall, as soon as practicable after 31 December of each year, or such other date as the Majority State Owned Enterprise adopts as its balance date, but within three months of that date, prepare and furnish to -

- (a) the Corporation; and
- (b) the Minister,

an annual report on the operations of the Majority State Owned Enterprise for the year ending 31 December preceding or such other date as the Majority State Owned Enterprise adopts as its balance date, together with its audited financial statements in respect of that accounting period.

(2) Financial statements under Subsection (1) shall be in the form, and in accordance with generally accepted accounting practice as provided under the *Companies Act 1997*.

(3) 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 Directors of the Majority State Owned Enterprise shall add such information and explanations as will give a true and fair view of those matters.

(4) Concurrent to furnishing financial statements in accordance with Subsection (1) and (2), the Board of the Majority State Owned Enterprise shall also submit the financial statements to the Auditor-General who shall report to the National Parliament in accordance with Part II of the *Audit Act 1989*, and where such report has not been completed prior to the expiry of the period specified in Subsection (1), the unaudited financial statements shall be so furnished in accordance with Subsection (1) and be clearly marked as “unaudited” and the audited financial statements shall be furnished as soon as they are available.

(5) Except as provided in this Act, the report of the Auditor-General shall be included in any reproduction of the report or financial statements for publication or other purpose.

(6) The first annual report and audited financial statement shall be for that part of the financial year commencing on the commencement date until the 31 December following.

(7) The Minister shall cause the annual report, audited financial statements and the report from the Auditor-General to be published and presented to the National Parliament at the next sitting after receipt in each case by the Minister.

(8) After presentation to the National Parliament of the annual report and audited financial statement by the Minister referred to in Subsection (7), the Majority State Owned Enterprise shall cause the annual report and audited financial statements, together with the report from the Auditor-General -

- (a) to be posted and published in the Majority State Owned Enterprise’s official website; and
- (b) be published widely in a newspaper and circulated nationally.

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(9) Management accounts for the most recent calendar quarter and the financial year to date prepared to professional standards and rolling one year financial projections for the Majority State Owned Enterprise shall be provided to the departmental head of the department responsible for treasury matters within 30 days of the end of each calendar quarter commencing in respect of the first calendar quarter ending 31 December.

Division 6. - Borrowing powers and dividend payments.

46N. BORROWING POWERS.

Subject to this Act and in particular to Sections 46B, 46D and 46J, a Majority State Owned Enterprise has all the powers of a company under the *Companies Act 1997* to borrow money, obtain financial accommodation, give security and grant guarantees or indemnities.

46O. PAYMENT OF DIVIDENDS BY MAJORITY STATE OWNED ENTERPRISES.

(1) A Majority State Owned Enterprise shall, in its Corporate Plan and Statement of Corporate Objectives, declare the percentage of its net profit after tax that shall be paid as a dividend for each year for the next three consecutive financial years and such dividend shall be apportioned and paid in accordance with Subsection (4).

(2) The dividend shall be paid in accordance with the processes and requirements provided under this Act and the *Companies Act 1997* and, in the event of any inconsistency, the requirements of this Act prevails to the extent of the inconsistency.

(3) The Corporate Plan of a Majority State Owned Enterprise shall detail the allocation of its operating profit after tax, including the purpose of any provisions or retained earnings which would otherwise increase the amount of dividend paid in each of the forecasted financial years.

(4) A dividend declared pursuant to Subsection (1) shall be apportioned and paid as interim dividend and final dividend in respect of each financial year in the following manner:

- (a) interim dividend shall be paid in the ninth month from the commencement of the financial year based on the financial results of the first six months of the financial year; and
- (b) final dividend, being the balance or such higher amount as may be derived from the financial results at the close of the financial year shall be declared and paid within four months of the close of the financial year.

(5) A Majority State Owned Enterprise shall pay all dividends to the Corporation and such dividend shall not, in any way, be capable of been attached, assigned, charged or set off against any debt or liability of the Corporation.

(6) In the event of any inconsistency between this section and a provision of any Act, subordinate legislation or company constitution or equivalent document, this section shall prevail to the extent of the inconsistency.

Division 7. - Directions and policies.

46P. DIRECTIONS AND POLICIES.

(1) Subject to Subsection (3), the Corporation may, by notice to a Majority State Owned Enterprise, set policies or give directions in any matter concerning the activities of the Majority State Owned Enterprise including, but not limited to -

- (a) operation; or
- (b) planning; or
- (c) staffing; or
- (d) staff remuneration; or
- (e) board appointment and remuneration; or
- (f) contract tendering; or
- (g) engagement of lawyers and consultants; or
- (h) industry reform; or
- (i) general good governance practice.

(2) Subject to Subsection (3), the Minister may issue policy directions -

- (a) to the Corporation -
 - (i) in accordance with Section 6A(3); or
 - (ii) in accordance with Part VI, Divisions 1 and 2; and
- (b) to the Majority State Owned Enterprise in accordance with Part VIA, Division 2.

(3) Directives issued under Subsections (1) and (2) shall not be inconsistent with the objectives of the Corporation as provided in Section 7 and the objective of the Majority State Owned Enterprise provided in Section 46A.

46Q. COMPLIANCE WITH DIRECTIONS AND POLICIES.

(1) A Majority State Owned Enterprise which fails to comply with its obligations under Sections 46B, 46D, 46I, 46J, 46L and 46M or which ignores or fails to give prompt effect to the direction given under Section 46P contravenes Part VIA.

(2) If a Majority State Owned Enterprise has contravened Part VIA, each of its Directors shall be deemed to have been involved in that contravention and thereby breached their duties as Directors pursuant to Section 112 of the *Companies Act 1997* and be punishable under Section 413 of that Act.

(3) It shall be a defence to any prosecution under this section if a Director establishes 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, it shall be open to the Corporation, instead of instigating an action under the *Companies Act 1997*, to recommend to the Minister to remove a Director of the Majority State Owned Enterprise, notwithstanding Section 12(10), and any Director so removed 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 removal.

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Division 8. - Chief Executive Officer.

46R. CHIEF EXECUTIVE OFFICER.

(1) Notwithstanding the constitution of the Majority State Owned Enterprise or the *Companies Act 1997* or any other legislation, the Chief Executive Officer of a Majority State Owned Enterprise shall be appointed by the National Executive Council in accordance with this section.

(2) The Chief Executive Officer shall be appointed for a term of three years and on such terms and conditions, including salary and allowances, as are determined by the Board of the Majority State Owned Enterprise in consultation with the Corporation.

(3) At least three months before the expiry of the Contract of Employment of the Chief Executive Officer, the Board of the Majority State Owned Enterprise shall -

- (a) conduct a performance review in accordance with the Contract of Employment of the Chief Executive Officer; and
- (b) the result of the performance review shall be submitted to the Corporation with a recommendation from the Board of the Majority State Owned Enterprise as to whether the Contract of Employment of the Chief Executive Officer should be renewed or terminated by effluxion of time.

(4) Where the Board of the Majority State Owned Enterprise resolves that the Contract of Employment of the Chief Executive Officer should terminate by effluxion of time, the Board of the Majority State Owned Enterprise shall, at least two months before the expiry of the Contract of Employment -

- (a) notify the Corporation of the circumstances giving rise to the creation of the vacancy; and
- (b) advise the Corporation of the qualification, knowledge, skills, experience and attributes required for the position of Chief Executive Officer and a term of reference for the position; and
- (c) the Corporation shall engage the services of a professional recruiting firm to advertise the position at least two months prior to the expiry of the Contract of Employment and to lead the candidate search, assessment and interview process.

(5) The Corporation shall submit to the Minister a shortlist of three candidates with a recommendation for the appointment of a Chief Executive Officer and the National Executive Council shall appoint the candidate so recommended.

46S. TRANSITIONAL.

(1) The persons appointed and holding office as Managing Directors of Majority State Owned Enterprises prior to the amendments to Section 12 and the coming into operation of Section 46R shall continue to hold office on the same terms and conditions under the Contract of Employment, save that the reference to the title "Managing Director" shall be read to mean Chief Executive Officer in accordance with the amendments to Section 12 and the amendments effected by Section 46R.

(2) Where the operation of Sections 12 and 46R creates conflict with the provisions of the Contract of Employment, the provisions of this Act shall be presumed to have amended the Contract of Employment to the extent of the inconsistency.

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(3) The operation of Sections 12 and 46R shall not, in relation to the position of Managing Director and Chief Executive Officer of Majority State Owned Enterprises, be regarded as constituting a breach of the Contract of Employment or of any obligation whether imposed by contract, statute, regulation or otherwise.”.

29. VESTING AND TRANSFER (AMENDMENT OF SECTION 50).

Section 50 of the Principal Act is amended by repealing Subsection (7) and replacing it with the following new subsection:

“(7) Notwithstanding any other Act or law to the contrary, any notification or publication in the National Gazette or otherwise made by the Minister or any other person or authority which purports to have the effect of revoking a vesting of assets in, or to divest assets of the Corporation is void and of no effect.”.

30. REPEAL OF SECTION 59A.

Section 59A of the Principal Act is repealed.

31. KUMUL MINERALS HOLDINGS (AMENDMENT OF SECTION 59B).

Section 59B of the Principal Act is amended in Subsection (2) -

- (a) by repealing the words “Sections 9, 9A and 50 of”; and
- (b) by repealing Paragraph (a) and replacing it with the following new paragraph:

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

32. KUMUL PETROLEUM HOLDINGS (AMENDMENT OF SECTION 59C).

Section 59C of the Principal Act is amended in Subsection (2) -

- (a) by repealing the words “Sections 9, 9A and 50 of”; and
- (b) by repealing Paragraph (a) and replacing it with the following:

“(a) Kumul Petroleum Company or the assets of any Kumul Petroleum Company; or”.

33. AMENDMENT OF SCHEDULE 1.

Schedule 1 of the Principal Act is amended -

- (a) by repealing the word, figure and symbol “Act, Section 11(14)(b)” and replacing them with the following:

“Act, Sections 11(13), 12(11)”; and

- (b) in Paragraph (a) by deleting the words “Independent Public Business”.

34. NEW SCHEDULES 3 AND 4.

The Principal Act is amended by inserting immediately after Schedule 2, the following new Schedules:

“SCHEDULE 3.

Act, Sec. 11(9).

PROCESS AND PROCEDURES RELATING TO THE APPOINTMENT OF DIRECTORS OF THE CORPORATION.

1. The Board of the Corporation will maintain a Board profile outlining the specific skills, experience and attributes needed on the Corporation’s Board in order to meet -
 - (a) its broad objectives detailed in Section 7 of this Act; and
 - (b) the specific targets set out in its corporate plan.
2. The Board Profile will identify any needed skills, experience or attributes that the Board is currently missing. The Minister for State Enterprises will review and either endorse or propose amendments to the Board Profile as part of the assessment of the Corporation’s Corporate Plan and Statement of Corporate Objectives (SCO). Any changes to the Board profile proposed by the Minister of State Enterprises must be communicated in writing and discussed with the Board of the Corporation.
3. When a vacancy arises on the Board of the Corporation, the Corporation Board should advise the Minister of State Enterprises of -
 - (a) the knowledge, skills, experience and attributes currently represented on the Board (i.e. Board profile); and
 - (b) the knowledge, skills, experience and attributes that would be desirable in a new Director to be appointed to the Board; and
 - (c) the terms of reference (TOR) for the future Director, which includes a description in accordance with Item 3 (b).
4. The Minister for State Enterprises will review and finalise the TOR for the future Director with the Board.
5. The Corporation may engage the services of a professional recruiting firm to assist with the preparation of Board Profiles, Director TORs, candidate search and assessment.
6. At least two months before preparing a shortlist -
 - (a) the Corporation will advertise the TOR and seek applications from interested persons; and
 - (b) interested persons can also be made aware of the opportunity through existing Directors of the Corporation, PNG Institute of Directors, trade organisations, Chambers of Commerce and the Corporation staff.
7. The Corporation will conduct a review of the applicants against the TOR, potential conflicts of interest and the criteria for disqualification and prepare a shortlist which should -
 - (a) include at least three candidates, one of which will be a female possessing the required qualifications; and
 - (b) identify the candidate which the Corporation considers most suitable for appointment as a Director, being the candidate which is most likely to fulfil the requirement of the TOR; and
 - (c) record any advice provided by the Corporation’s Board regarding the shortlist.

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8. If no female candidate possessing the required qualifications applies for the position, the shortlist can be completed without a female candidate.
9. The shortlist will be presented to the Minister of State Enterprises who will review and endorse the shortlist and proceed to instruct the Board of the Corporation (or professional recruiting firm if one has been engaged) to verify candidate documentation, check references and conduct interviews of the top 3 candidates.
10. Based on the due diligence and interviews, the Minister will recommend the preferred candidate to the National Executive Council.
11. Before the recommended candidate is appointed as a Director, the recommended candidate must provide the Minister with written notice -
 - (a) consenting to being a Director; and
 - (b) certifying that he or she is not disqualified from being a Director under law; and
 - (c) disclosing the nature and extent (including monetary value, if quantifiable) of all interests that he or she has at that time, or is likely to have, in matters relating to the Corporation or Majority State Owned Enterprise.
12. The Minister of State Enterprises will make appropriate submissions to the National Executive Council to formally appoint the recommended candidate.
13. Following appointment by the National Executive Council, the candidate must be briefed by -
 - (a) the Managing Director of the Corporation on the operations of the Corporation, including its most recent Corporate Plan, annual report and financial statements; and
 - (b) a representative of the Corporation, on the role, duties and responsibilities of a Director of a Majority State Owned Enterprise.
14. The newly appointed Director, before entering on his or her duties or exercising any power or authority under this Act, shall make a Declaration of Office and secrecy in the form set out in Schedule 1 in the presence of a duly qualified witness in accordance with the ***Oaths, Affirmations and Statutory Declarations Act*** (Chapter 317) and deliver that Declaration to the Secretary.

SCHEDULE 4.

Act, Sec. 12(8).

PROCESS AND PROCEDURES RELATING TO THE APPOINTMENT OF DIRECTORS OF MAJORITY STATE OWNED ENTERPRISE.

1. The MSOE Board will maintain a Board profile outlining the specific skills, experience and attributes needed on the MSOE Board in order to meet -
 - (a) its broad objectives detailed in Section 46A; and
 - (b) the specific targets set out in its Corporate Plan.
2. The Board Profile will identify any needed skills, experience or attributes that the Board is currently missing. The Corporation will review and either endorse or propose amendments to the Board Profile as part of the assessment of the MSOE Corporate Plan and Statement of Corporate Objectives (SCO). Any changes to the Board Profile proposed by the Corporation must be communicated in writing and discussed with the MSOE Board Chairman.
3. When a vacancy arises on the Board of a MSOE, the Board of that MSOE shall advise the Corporation of -
 - (a) the knowledge, skills, experience and attributes currently represented on the Board (i.e. updated Board Profile); and
 - (b) the knowledge, skills, experience and attributes that would be desirable in a new Director to be appointed to the Board; and
 - (c) the terms of reference (TOR) for the future Director, which includes a description in accordance with Item 3(b) above.
4. The Corporation will review and finalise the TOR for the future Director with the MSOE Board.
5. The Corporation may engage the services of a professional recruiting firm to assist with the preparation of Board Profiles, Director TORs, candidate search and assessment.
6. At least two months before preparing a shortlist -
 - (a) the Corporation will advertise the TOR and seek applications from interested persons; and
 - (b) interested persons can also be made aware of the opportunity through existing State Owned Enterprise Directors, PNG Institute of Directors, trade organisations, Chambers of Commerce, the Corporation and MSOE staff.
7. The Corporation will conduct a review of the applicants against the TOR, potential conflicts of interest and the criteria for disqualification and prepare a shortlist which should -
 - (a) include at least three candidates, one of which will be a female possessing the required qualifications; and
 - (b) identify the candidate which the Corporation considers most suitable for appointment as a Director, being the candidate which is most likely to fulfil the requirement of the TOR; and
 - (c) record any advice provided to the Corporation by the SOE Board regarding the shortlist.
8. If no female candidate possessing the required qualifications applies for the position, the shortlist can be completed without a female candidate.

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9. The shortlist will be presented to the Minister of State Enterprises who will review and endorse the shortlist, and instruct the Corporation (or professional recruiting firm if one has been engaged) to verify candidate documentation, check references and conduct interviews of the top 3 candidates.
10. Based on the due diligence and interviews, the Minister will recommend the preferred candidate to the National Executive Council, and record any advice on this selection from the MSOE Board Chairman.
11. Before the recommended candidate is appointed as a Director the recommended candidate must provide the Corporation with written notice -
 - (a) consenting to being a Director; and
 - (b) certifying that he or she is not disqualified from being a Director under law; and
 - (c) disclosing the nature and extent (including monetary value, if quantifiable) of all interests that he or she has at that time, or is likely to have, in matters relating to the Corporation or the MSOE.
12. The National Executive Council will formally appoint the preferred candidate.
13. Following appointment by the National Executive Council, the candidate must be briefed by -
 - (a) the Chief Executive Officer of the MSOE, on the operations of the MSOE, including the MSOE's most recent Corporate Plan, annual report and financial statements; and
 - (b) a representative of the Corporation, on the role, duties and responsibilities of a Director of a MSOE.
14. The newly appointed Director, before entering on his or her duties or exercising any power or authority under this Act, shall make a Declaration of Office and secrecy in the form set out in Schedule 1 in the presence of a duly qualified witness in accordance with the ***Oaths, Affirmations and Statutory Declarations Act*** (Chapter 317) and deliver that Declaration to the Secretary.”.

I hereby certify that the above is a fair print of the ***Kumul Consolidated Holdings Authorisation (Amendment) Act 2021***, which has been made by the National Parliament.


Clerk of the National Parliament.

15 OCT 2021

I hereby certify that the ***Kumul Consolidated Holdings Authorisation (Amendment) Act 2021***, was made by the National Parliament on 17 August 2021.


Speaker of the National Parliament.

15 OCT 2021