



No. 23 of 1992.

Papua New Guinea Holdings Corporation Act 1992.

Certified on : 19. Aug. 92

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1992.

Papua New Guinea Holdings Corporation Act 1992.

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SCHEDULE 1.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1992.

AN ACT

entitled

Papua New Guinea Holdings Corporation Act 1992,

Being an Act to establish the Papua New Guinea Holdings Corporation and to define its functions and powers, 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.

In this Act, unless the contrary intention appears -

- "assets" mean any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) and includes shares and capital (uncalled or otherwise) in any company, securities, choses in action and documents of any kind;
- "Board" means the Board of Directors of the Corporation;
- "Chairman" means the Chairman of the Board appointed pursuant to Section 9;
- "Consolidated Revenue Fund" means the Consolidated Revenue Fund established by Section 10 of the *Public Finances (Management) Act 1986*;
- "Corporation" means Papua New Guinea Holdings Corporation established by Section 2;
- "Deputy Chairman" means the Deputy Chairman of the Board appointed pursuant to Section 9;
- "Director" means a member of the Board appointed pursuant to Section 8;
- "eligible person" means a person defined to be an eligible person in the Policy of the Corporation as determined from time to time pursuant to Section 6;
- "enterprise" means the whole or any part of any business, undertaking or activity of -
 - (a) a statutory body established by Act; or
 - (b) a company wholly owned by the State; or
 - (c) the State; or

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- (d) a Department, or Office within a Department, and, without limiting the generality of the foregoing, includes the whole or any part of assets or liabilities of any of the bodies referred to in Paragraphs (a) to (d) inclusive;
- "liabilities" mean liabilities, debts and obligations (whether present or future and whether vested or contingent);
- "Managing Director" means the Managing Director of the Corporation appointed pursuant to Section 16;
- "net profit of the Corporation" means the amount determined from time to time by the Board as the net profit in accordance with generally accepted accounting principles consistently applied in the country;
- "Policy" or "Policy of the Corporation" means a Policy of the Corporation approved by the Head of State, acting on advice, pursuant to Section 6, and in respect of the privatization of an enterprise, means the Policy approved by the Head of State, acting on advice, in relation to that enterprise or successor company;
- "privatization" means the process by which the control, management or ownership of an enterprise wholly or partially passes from the State to eligible persons, and "privatize" and "privatized" have corresponding meanings;
- "special project" means a project certified by the Minister as a special project, and without limiting the generality of the foregoing, includes a project and any matter arising therefrom during the consideration, deliberation, planning or implementation of which the Minister requires specialist advice or consultation, and every activity, advisory or otherwise, which does not fall within the definition of privatization;
- "successor company" means a company referred to in Section 21, and in respect of the privatization of an enterprise, means the successor company to which assets and liabilities of the enterprise have been or are to be transferred under Section 41;
- "this Act" includes the Regulations.

PART II. - PAPUA NEW GUINEA HOLDINGS CORPORATION.

2. ESTABLISHMENT OF THE CORPORATION.

Papua New Guinea Holdings Corporation is hereby established.

3. INCORPORATION OF THE CORPORATION.

(1) Papua New Guinea Holdings Corporation -

- (a) is a corporation with perpetual succession; and
- (b) shall have a seal; and
- (c) may acquire, hold, deal with and dispose of property; and
- (d) may sue or be sued in its corporate name.

(2) All courts, Judges and persons acting judicially shall take judicial notice of the seal of the Corporation affixed to a document, and shall presume that it was duly affixed.

4. FUNCTIONS OF THE CORPORATION.

(1) The functions of the Corporation are, subject always to the Policy, where applicable, to -

- (a) formulate and recommend policies in relation to privatization generally and specifically in relation to each enterprise recommended for privatization; and

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- (b) identify enterprises suitable for privatization and recommend to the Minister accordingly; and
- (c) cause successor companies to accept from the State, or otherwise acquire, ownership of and responsibility for any enterprise to be privatized or otherwise dealt with in accordance with the Policy; and
- (d) incorporate or otherwise acquire successor companies; and
- (e) in accordance with the Policy, undertake and cause to be carried out -
 - (i) the privatization of such enterprises as the Head of State, acting on advice, decides are to be privatized; and
 - (ii) such special projects, as are referred to the Corporation by the Head of State, acting on advice; and
- (f) accept, subscribe for or otherwise acquire shares in successor companies and deal with them in accordance with the Policy; and
- (g) procure or cause to be allotted, issued, disposed of or otherwise dealt with fully or partly paid shares in successor companies in accordance with the Policy; and
- (h) establish or manage or join in the establishment or management in the country or elsewhere of investment companies or unit trusts or other mutual funds; and
- (i) take such action as appears to it necessary or desirable to sell or otherwise make available to eligible persons shares, units or sub-units in any such company, trust or fund; and
- (j) enter directly or indirectly into incorporated or unincorporated joint ventures or other consortium arrangements; and
- (k) undertake special projects; and
- (l) carry out such other functions as are given to it under this Act or any other law; and
- (m) do anything that is necessary or convenient for or incidental to the purpose of its functions.

(2) The Corporation may, and shall if the Minister so directs, act as agent for the State in relation to any matter within the functions of the Corporation, and the State shall fully and effectually indemnify it and hold it safe against all claims or actions of whatsoever nature or howsoever arising made or taken against it as a result of its acting as such agent.

(3) An enterprise, and every Board member and officer thereof, shall co-operate with and assist the Corporation in the performance of its functions.

5. GENERAL POWERS OF THE CORPORATION.

(1) The Corporation has power to do, in the country or elsewhere, all things necessary or convenient to be done for or in connection with or otherwise incidental to the performance of its functions.

(2) Without limiting the generality of Subsection (1), but subject to this Act, the powers of the Corporation include power to:-

- (a) receive and disburse moneys advanced by the Minister or appropriated by the Parliament for the purpose of performing its functions or discharging its duties under this Act; and

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- (b) enter into arrangements for, or participate in the formation, acquisition, sale, liquidation or other disposal of companies; and
- (c) accept, subscribe for, buy or otherwise acquire, hold, sell, accept or grant options or otherwise deal with shares, stock, debentures, debenture stock, units and other securities of any kind; and
- (d) enter into -
 - (i) any arrangement for the sharing of profits, union of interest, co-operation, joint venture, partnership, reciprocal concession or otherwise with the State, any statutory corporation or instrumentality or any person or company; and
 - (ii) any business, undertaking, activity or transaction capable of being conducted so as directly or indirectly to benefit the Corporation or successor companies; and
- (e) promote, effect, guarantee, underwrite, participate in, manage and carry out any issue of shares, stock, debentures or debenture stock or units of any company, corporation, unit trust or association and lend or borrow money for the purpose of any such issue; and
- (f) establish and maintain for any company, authority or body any register relating to any shares, stock, debentures, debenture stock, units, funds or other securities or undertake any duties in relation to the registration of transfers, the issue of certificates or otherwise; and
- (g) furnish managerial, financial, technical and administrative advice and assist in obtaining management, financial, legal, technical and administrative advice or services; and
- (h) undertake or procure the undertaking of research, studies, investigations and experiments in respect of an enterprise, successor company or special project; and
- (i) give and execute for the purpose of securing moneys borrowed by the Corporation security over the assets of the Corporation including mortgages, floating charges and other instruments of assurance or charge; and
- (j) purchase or otherwise acquire, hold, lease, sub-lease, construct, improve or otherwise develop, sell, demolish or otherwise dispose of, mortgage, charge, encumber or otherwise deal with, grant or accept options in respect of real property and any legal or equitable estate or interest therein of every kind, whether present, future, vested or contingent; and
- (k) promote by any means whatsoever public awareness of the objects and activities of the Corporation and the policy; and
- (l) enter into such contracts of insurance from time to time as are considered prudent by the Corporation having regard to the assets, activities and liabilities of the Corporation, successor companies and where applicable, special projects; and
- (m) act as trustee of any estate or interest in property whether real or personal and whether present, future, vested or contingent and as such, exercise all or any of the powers and authorities vested in the Corporation pursuant to this Act; and

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- (n) purchase or otherwise acquire, hold, lease, sub-lease, hire out and take on hire, alter, repair, improve, maintain, sell or otherwise dispose of, mortgage, charge, encumber or otherwise deal with, grant or accept options in respect of personal property and any legal or equitable interest therein of every kind, whether present, future, vested or contingent including plant, machinery, motor vehicles, equipment, goods and chattels of every description including fixtures and fittings; and
- (o) enter into contracts and agreements for or in respect of or otherwise delegate the performance of any function of or the exercise of any power of the Corporation, including as the Board may consider appropriate, the right to sub-contract or sub-delegate; and
- (p) appoint, remunerate and terminate the appointment of advisers, agents or consultants; and
- (q) guarantee or indemnify in respect of the due fulfillment of contracts and liabilities of the Corporation, successor companies and where applicable special projects; and
- (r) administer mutual, superannuation, provident or retirement funds or schemes, and undertake and execute any other activity the undertaking of which seems desirable; and
- (s) enter into arrangements with the State, public instrumentalities or other persons for the purpose of obtaining, disposing of, maintaining or otherwise dealing with property, licences, rights, privileges, grants or concessions or for taking on or disposing of assets or liabilities; and
- (t) by resolution of the Board, appoint a person or persons to act as its representative or representatives at a particular meeting or at all meetings of a successor company or any subsidiary thereof; and
- (u) do all such things as are required to be done by the Corporation thereof; and
- (v) do anything in connection with or otherwise incidental to any of the powers and functions.

6. POLICY OF THE CORPORATION.

- (1) The Board -
 - (a) may, from time to time, recommend to the Minister a proposed policy in relation to privatization generally; and
 - (b) shall, when making a recommendation to the Minister that an enterprise be privatized, recommend to the Minister a proposed policy in relation to the privatization of that enterprise.
- (2) A proposed policy recommended under Subsection (1)(a) -
 - (a) shall contain -
 - (i) the reasons (financial and otherwise) in favour of and against privatization generally; and
 - (ii) alternative methods, other than privatization, of increasing the efficiency of enterprises and reducing the financial burden of the State in relation to enterprises; and
 - (iii) if feasible, a list of enterprises likely to be considered by the Corporation and recommended for privatization; and

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(b) may contain a definition of who for the purposes of privatization generally, is to constitute an eligible person (being a person to whom the holding of shares in a successor company is limited).

(3) A proposed policy recommended under Subsection (1)(b) shall contain, in relation to the enterprise recommended for privatization -

- (a) the reasons (financial and otherwise) in favour of and against the privatization; and
- (b) possible alternative methods, other than privatization, of increasing the efficiency of the enterprise and reducing the financial burden of the State in the enterprise; and
- (c) details of the method by which privatization be effected and a suggested timetable in relation thereto; and
- (d) the definition of who is to constitute an eligible person (being a person to whom the holding of shares in the successor company is limited).

(4) The Minister shall consider any proposed policy recommended under Subsection (1)(a) or (b) and shall in so considering it have regard to -

- (a) the interests of citizens; and
- (b) the maximization of the net worth of -
 - (i) the State's investment in the Corporation; and
 - (ii) the successor company; and
 - (iii) where applicable, the special project.

(5) The Minister may require the Corporation -

- (a) to provide further information or clarification in respect of; or
- (b) to reconsider and make further recommendation to him on any aspect of,

a proposed policy recommended under Subsection (1)(a) or (b).

(6) After considering -

- (a) a proposed policy under Subsection (4); and
- (b) any further information or clarification under Subsection (5) (a); and
- (c) any further recommendation under Subsection (5)(b),

the Minister shall, subject to Subsection (7), submit the proposed policy together with his own recommendation thereon to the National Executive Council.

(7) Where the recommendation of the Minister to the National Executive Council under Subsection (6) -

- (a) is contrary; or
- (b) recommends an alteration,

to a proposed policy recommended under Subsection (1), the Minister shall -

- (c) prior to submitting his recommendation to the National Executive Council under Subsection (6), refer it to the Board for comment; and
- (d) submit a copy of any such comment to the National Executive Council together with the proposed policy and his recommendations.

(8) The Head of State, acting on advice, may approve a proposed policy under this section and a proposed policy so approved shall -

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- (a) where originally recommended under Subsection (1)(a), constitute the Policy of the Corporation in relation to privatization generally; and
 - (b) where originally recommended under Subsection (1)(b), constitute the Policy of the Corporation in relation to the privatization of the enterprise in respect of which it was recommended,
- and the Corporation shall, in performing its functions and exercising its powers, be bound by the Policy of the Corporation.

(9) The Board may from time to time recommend to the Minister a proposed alteration to a Policy; and any such proposed alteration shall be dealt with in accordance with this section as if it were a proposed policy and may be approved by the Head of State, acting on advice and if so approved shall constitute a Policy of the Corporation.

PART III. - BOARD OF DIRECTORS OF THE CORPORATION.

7. BOARD OF DIRECTORS.

(1) The Board of Directors of the Corporation is hereby established.

(2) The Board shall perform the functions, exercise the powers and arrange and direct the affairs of the Corporation.

8. MEMBERSHIP OF THE BOARD.

(1) The Board shall consist of -

- (a) the Managing Director, *ex officio*; and
- (b) seven persons appointed as Directors by notice in the National Gazette by the Head of State, acting on advice given after considering a recommendation from the Minister.

(2) The Directors appointed under Subsection (1)(b) -

- (a) hold office during the pleasure of the Head of State, acting on advice; and
- (b) are entitled to such fees, allowances and other remuneration (if any) as the Minister determines.

9. CHAIRMAN AND DEPUTY CHAIRMAN.

(1) The Head of State, acting on advice given after considering a recommendation from the Minister, shall appoint one of the Directors to be Chairman of the Board and another of the Directors (who may be the Managing Director) to be the Deputy Chairman of the Board.

(2) The Chairman and Deputy Chairman -

- (a) hold office during the pleasure of the Head of State, acting on advice; and
- (b) hold office on such terms and conditions as are determined by the Minister; and
- (c) cease to hold office if they cease to be Directors; and
- (d) may resign from office of Chairman or Deputy Chairman respectively by written notice addressed to the Head of State and delivered to the Minister.

10. VACATION OF OFFICE BY DIRECTOR.

(1) A Director appointed under Section 8(1)(b) may resign his office as Director by written notice addressed to the Head of State and delivered to the Minister.

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- (2) If a Director appointed under Section 8(1)(b) -
- (a) becomes permanently incapable of performing his duties; or
 - (b) resigns his office in accordance with Subsection (1); or
 - (c) is absent, except with the consent of the Minister, from three consecutive meetings of the Board; or
 - (d) fails to comply with Section 14; or
 - (e) becomes bankrupt, or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
 - (f) is convicted of an offence punishable under a law by a term of imprisonment of one year or longer,
- the Head of State, acting on advice, shall terminate his appointment.

11. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.

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

12. DECLARATION OF OFFICE AND SECRECY.

(1) Each Director shall, before commencing his duties or exercising any powers under this Act, make the Declaration of Office and the Declaration of Loyalty as provided by the Constitution and a Declaration of Secrecy in the form in Schedule 1.

(2) The Declarations referred to in Subsection (1) may be made before the Minister.

13. MEETINGS OF THE BOARD.

(1) The Minister shall call the first meeting of the Board at such time and place and in such manner as the Minister may think fit.

(2) The Board may, subject to this Act, determine the procedure for the calling of meetings of the Board and the conduct of business at such meetings.

(3) The Board shall meet at such times and places as the Minister may direct or failing such direction as the Chairman or in his absence the Deputy Chairman may direct.

(4) At a meeting of the Board:-

- (a) four Directors, of whom the Managing Director shall be one, shall constitute a quorum; and
- (b) the Chairman or in his absence the Deputy Chairman shall preside, and in the absence of both the Chairman and the Deputy Chairman, the Directors present shall elect one of the number to preside; and
- (c) all questions shall be decided by a majority of the Directors present and voting; and
- (d) the person presiding at a meeting has a deliberative vote and in the event of an equality of votes on a resolution, also has a casting vote.

14. DISCLOSURE OF INTEREST.

(1) A Director who is directly or indirectly interested in a matter (other than in his capacity as a Director) being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a duly constituted meeting of the Board.

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- (2) A disclosure under Subsection (1) shall be recorded in the minutes of the meeting of the Board and after such disclosure the Director interested -
- (a) shall not take part in any deliberation or decision of the Board with respect to the matter; and
 - (b) shall be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision.

15. DELEGATION.

The Corporation may, by written instrument, delegate to a person all or any of its powers and functions under this Act (except this power of delegation).

PART IV. - THE SERVICE OF THE CORPORATION.

16. MANAGING DIRECTOR.

(1) There shall be a Managing Director of the Corporation who shall be a suitably qualified person appointed by notice in the National Gazette by the Minister given after considering recommendations from the Board.

- (2) The Managing Director -
- (a) shall hold office for such period, not exceeding four years, and on such terms and conditions as may be determined by the Minister after considering a report from the Board; and
 - (b) is eligible for re-appointment.
- (3) The Managing Director -
- (a) is the chief executive officer of the Corporation; and
 - (b) is the head of the Service of the Corporation; and
 - (c) is responsible to the Board for the efficient carrying out of the functions of the Corporation; and
 - (d) shall manage the Corporation in accordance with the policy and the directions of the Board; and
 - (e) shall advise the Board on any matter concerning the Corporation referred to him by the Board.

17. APPOINTMENT OF OFFICERS.

(1) The Board may appoint to be officers of the Corporation such persons as are necessary for the purposes of this Act.

(2) The Managing Director and officers of the Corporation constitute the Service of the Corporation.

(3) Where, immediately before his appointment, an officer of the Corporation was an officer of the Public Service, his service as an officer of the Corporation shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of:-

- (a) leave of absence on the ground of illness; and
- (b) long leave, furlough or pay in lieu of long leave or furlough (including pay to dependants or personal representatives on the death of the officer).

(4) Subject to this Act, an officer of the Corporation shall hold office on such terms and conditions as may be determined by the Corporation from time to time.

18. REGULATIONS FOR THE SERVICE OF THE CORPORATION.

(1) The Regulations may make provision, in so far as not contained in a contract of employment in relation to the Service of the Corporation, and in particular may prescribe the terms and conditions of employment of officers including superannuation and termination benefits for officers of the Corporation on death or retirement.

(2) In the absence of Regulations under Subsection (1), any appropriate provisions of the *Public Services (Management) Act* 1986 and Regulations and General Orders made thereunder may be applied with such modification as the Board determines.

19. TEMPORARY AND CASUAL EMPLOYEES.

(1) The Managing Director may appoint from time to time such temporary and casual employees as are necessary for the purposes of this Act.

(2) Employees appointed under Subsection (1) shall be employed on such terms and conditions as the Corporation may from time to time determine.

PART V. - CONSULTANTS.

20. APPOINTMENT OF CONSULTANTS.

(1) The Corporation may by written agreement appoint such consultants to carry out all or any one or more of the functions and powers of the Corporation or to carry out such duties or provide such advice or services to assist the Corporation in carrying out any functions or powers of the Corporation as the Board may from time to time determine.

(2) The duration of the appointment of any consultant and the terms and conditions of the appointment shall be determined by the Board and shall be subject to the approval of the Minister.

(3) Nothing contained in this Act shall prevent the Corporation from granting to any consultant appointed pursuant to this section the exclusive right to carry out all or any one or more of the functions or powers of the Corporation.

(4) Subject to Section 14, nothing contained in this Act shall prevent a Director from being appointed a consultant pursuant to this section.

PART VI. - SUCCESSOR COMPANIES.

21. INCORPORATION OR ACQUISITION OF SUCCESSOR COMPANIES.

(1) The Corporation may from time to time cause successor companies to be incorporated or otherwise acquired by the Corporation.

(2) Subject to the Policy, a successor company shall be incorporated or acquired for the purpose of a privatization or, where applicable, a special project.

(3) The Corporation shall ensure that, on or before the transfer date referred to in Section 39(b), all shares in the nominated successor company are beneficially owned by the Corporation.

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PART VII. - FINANCE, ETC.,

22. SUBSIDIARY COMPANIES.

(1) For the purposes of this Part, a company (including a successor company) shall, subject to Subsection (3), be deemed to be a subsidiary of the Corporation if the Corporation -

- (a) controls the composition of the board of directors of the company; or
- (b) controls more than 50% of the voting power of the company; or
- (c) holds more than 50% of the issued share capital of the company (excluding any part of it that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

(2) For the purposes of Subsection (1), the composition of a company's board of directors shall be deemed to be controlled by the Corporation, if the Corporation, by the exercise of a power exercisable by it without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and for the purposes of this provision the Corporation shall be deemed to have power to make such an appointment if -

- (a) a person cannot be appointed as a director without the exercise in his favour by the Corporation of such a power; or
- (b) a person's appointment as a director follows necessarily from his being a member of the controlling body of, or an officer or employee of, the Company.

(3) In determining whether a company is a subsidiary of the Corporation -

- (a) subject to Paragraphs (b) and (c), any shares held or power exercisable -
 - (i) by a person as a nominee for the Corporation; and
 - (ii) by, or by a nominee for, a subsidiary of the Corporation,shall be treated as held or exercisable by the Corporation; and
- (b) any shares held or power exercisable by a person by virtue of the provisions of any debenture of the company, or of a trust deed for securing an issue of any such debenture shall be disregarded; and
- (c) any share held, or power exercisable by, or by a nominee for, the Corporation or a subsidiary of it (otherwise than as mentioned in Paragraph (b)) shall be treated as not held or exercisable by the Corporation if -
 - (i) the ordinary course of business of the Corporation or its subsidiary, as the case may be, includes the lending of money; and
 - (ii) the shares held or the power is exercisable by way of security only for the purposes of a transaction entered into in the normal course of business.

(4) For the purposes of this Part, a company is deemed to be a subsidiary company if it is a subsidiary of a subsidiary company.

23. CAPITAL.

(1) The initial capital of the Corporation shall be K5,000,000 payable out of the Consolidated Revenue Fund, which, to the extent necessary, is appropriated accordingly.

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(2) The capital may be increased from time to time by the Minister by order made on the recommendation of the Board and published in the National Gazette.

(3) Any increase in capital which is not met by a transfer under Section 24(2) shall be paid out of monies appropriated by Act for the purpose.

24. GENERAL RESERVE FUND.

(1) The Corporation shall establish and maintain a general reserve fund, to be called the Papua New Guinea Holdings Corporation General Reserve Fund, consisting of such sums as are placed to the credit of the Fund pursuant to Section 25(1)(a).

(2) There may be transferred from time to time from the Papua New Guinea Holdings Corporation General Reserve Fund to the Corporation as capital such sum as the Board, with the approval of the Minister, may determine.

25. DEALING WITH PROFITS.

(1) At the end of each financial year or at such other times as the Minister may from time to time direct, the net profit of the Corporation for that financial year or for the period directed by the Minister, after making provision for such contingencies and accounting provisions as the Board, with the approval of the Minister, may determine, shall be dealt with as follows:-

- (a) such amount as the Minister, after consultation with the Board, may determine shall be placed to the credit of the Papua New Guinea Holdings Corporation General Reserve Fund; and
- (b) the balance (if any) shall be paid into and form part of the Consolidated Revenue Fund.

(2) No amount shall be paid into the Consolidated Revenue Fund under Subsection (1)(b) if, in the opinion of the Board, the assets of the Corporation are, or after the payment would be, less than the sum of its liabilities.

(3) A receipt, given by the Minister or by a person duly authorized by him for this purpose, for moneys paid into the Consolidated Revenue Fund, shall constitute sufficient evidence of such payment and a full discharge of the Corporation's obligation to pay the same.

26. BANK ACCOUNTS.

(1) The Corporation -

- (a) shall open and maintain accounts within the country with such bank or banks as the Board may from time to time determine; and
- (b) may open and maintain accounts in other countries with such bank or banks as the Board may from time to time determine.

(2) The Corporation shall pay all moneys received by it into an account referred to in Subsection (1), as is considered appropriate by the Managing Director.

27. PERFORMANCE AND MANAGEMENT PLAN.

(1) The Managing Director shall, at such intervals as are required by the Departmental Head of the Department responsible for financial management, submit to the Departmental Head of the Department responsible for financial management, a performance and management plan approved by the Board in respect of the Corporation.

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(2) A performance and management plan under Subsection (1) shall be in such form, and shall contain such information as is specified by the Departmental Head of the Department responsible for financial management.

28. PARTICULARS OF PROPOSED EXPENDITURE.

The Managing Director shall, not later than three months before the end of each fiscal year, submit to the Departmental Head of the Department responsible for financial management -

- (a) estimates of the receipts and expenditure of the Corporation and of each subsidiary company for the next financial year; and
- (b) its proposed works programme (if any) for that financial year, as approved by the Board and in such form as the Minister responsible for financial matters approves.

29. LOANS BY THE STATE.

(1) The Corporation may accept an offer by the Minister responsible for financial matters to loan moneys from the State to the Corporation for the purposes of the Corporation on such terms as are agreed between the Corporation and the Minister responsible for financial matters.

(2) The Corporation shall repay in accordance with the terms on which a loan under Subsection (1) is made, such portion of the loan as is repayable.

30. PRIVATE TREATY LOANS.

(1) The Corporation may, with the consent of the Minister responsible for financial matters, borrow money for its purposes from a person on such terms as are agreed between the Corporation and that person.

(2) The Corporation shall repay a loan made under Subsection (1) in accordance with the terms on which it was made.

31. BORROWING BY OVERDRAFT.

The Corporation may, with the consent of the Minister responsible for financial matters, borrow for its purposes by overdraft within such limits as the Minister approves.

32. INVESTMENT.

(1) In this section -

"approved bank" means a bank carrying on business in the country and approved for the purposes of this section by the Minister responsible for financial matters by notice in the National Gazette;

"authorized short-term market" means the group of dealer companies that are authorized by the Central Bank to be approved dealers in short-term loans and towards which that Bank acts as a lender of last resort.

(2) Moneys of the Corporation that are not immediately required may be invested -

- (a) in any securities of, or guaranteed by, the State; or
- (b) in any manner in which a trustee may, under any law, invest trust moneys in his hands; or
- (c) on deposit with an approved bank; or
- (d) in the securities of a authorized short-term market; or
- (e) in any other manner approved by the Minister responsible for financial matters.

Papua New Guinea Holdings Corporation

33. APPLICATION OF MONEYS.

The moneys of the Corporation may be applied only in payment or discharge of expenses, obligations and liabilities of the Corporation arising under this Act.

34. ACCOUNTS, RECORDS, ETC.,

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

(2) The accounts and records required by Subsection (1) shall be kept in accordance with the accounting principles generally applied in commercial practice.

35. REPORTS AND FINANCIAL STATEMENTS.

(1) The Chairman shall, before 30 June in each year, prepare and furnish to -

(a) the Minister; and

(b) the Minister responsible for financial matters,

a report on the operations of the Corporation for the year ending 31 December preceding, together with financial statements in respect of that year.

(2) Financial statements under Subsection (1) shall be in accordance with principles generally applied in commercial practice.

(3) Before furnishing financial statements in accordance with Subsection (1), the Chairman shall submit them to the Auditor-General who shall report to the Minister in accordance with Part II of the *Audit Act* 1989.

(4) The Minister shall cause the report and financial statements together with the report of the Auditor-General, to be laid before Parliament at the first meeting of Parliament after their receipt by the Minister.

(5) 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 report and financial statements shall be for that part of the fiscal year commencing on the date of coming into operation of this Act until 31 December following.

36. AUDIT.

(1) The Board shall appoint a Registered Company Auditor as defined in the *Accountants Registration Act* (Chapter 89) (as approved by the Minister) to conduct an annual audit of the Corporation.

(2) The board of directors of each subsidiary company shall appoint a Registered Company Auditor as defined in the *Accountants Registration Act* (Chapter 89) (as approved by the Minister) to conduct an annual audit of the subsidiary company.

37. LIABILITY TO TAXATION.

(1) The Corporation is not liable to pay taxes, duties, fees, charges, rates, excise or other impost of any kind charged or imposed under any legislation currently enacted or which may be enacted by Parliament or, subject to the law permitting, by a provincial legislature except for legislation enacted by the Parliament specifically to amend or repeal this section.

(2) A successor company, in relation to a transfer under Section 41, is not liable to pay taxes, duties, fees, charges, rates, excise or other impost of any kind charged or imposed under any legislation currently enacted or which may be enacted by Parliament or, subject to the law permitting, by a provincial legislature except for legislation enacted by the Parliament specifically to amend or repeal this section.

PART VIII. - PRIVATIZATION OF AN ENTERPRISE.

38. DECISION TO PRIVATIZE AN ENTERPRISE.

The Head of State, acting on advice, may decide that an enterprise be privatized.

39. HEAD OF STATE, ACTING ON ADVICE TO NOMINATE ENTERPRISE, APPOINT TRANSFER DATE AND NOMINATE SUCCESSOR COMPANY.

Where the Head of State, acting on advice has decided under Section 38 that an enterprise be privatized, he shall by notice in the National Gazette -

- (a) nominate the enterprise to be privatized, provided that, where the enterprise comprises only part of the assets or liabilities of a business, undertaking or activity of -
 - (i) a statutory body established by Act; or
 - (ii) a company wholly owned by the State; or
 - (iii) the State; or
 - (iv) a Department, or Office within a Department,the Head of State, acting on advice, shall also specify such part thereof as is to be privatized (which nominated enterprise or specified part thereof is hereinafter referred to as "the nominated enterprise"); and
- (b) appoint a day (hereinafter referred to as "the transfer date"); and
- (c) nominate the successor company which shall acquire the nominated enterprise (hereinafter referred to as "the nominated successor company").

40. SHARES IN THE NOMINATED SUCCESSOR COMPANY ON TRANSFER DATE.

(1) The Corporation shall ensure that all shares of the nominated successor company are, on the transfer date, wholly owned by the Corporation.

(2) The shares in the nominated successor company shall be held by the Corporation on behalf of the State.

41. TRANSFER OF ASSETS, ETC. OF THE NOMINATED ENTERPRISE TO THE NOMINATED SUCCESSOR COMPANY ON THE TRANSFER DATE.

On the transfer date, except as may not have been specified in the National Gazette pursuant to Section 39(a) -

- (a) all assets held by, and all obligations and liabilities imposed on, the nominated enterprise are transferred to the nominated successor company; and

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- (b) all contracts and agreements (other than contracts of employment) entered into, made with or addressed to the nominated enterprise are, to the extent that they were immediately before the transfer date binding on and enforceable against the nominated enterprise; binding on and of full force and effect against or in favour of the nominated successor company as if the nominated successor company had been a party to them or bound by them or entitled to the benefit of them; and
- (c) all licences, permits and authorities held by the nominated enterprise in connection with the undertaking of the nominated enterprise are transferred to, and are deemed to be held by, the nominated successor company for the unexpired period of such licences, permits and authorities or until their cessation otherwise according to law; and
- (d) any arbitration, action or proceeding pending or existing by, against or in favour of the nominated enterprise does not abate or discontinue, but may be prosecuted, continued or enforced by, against or in favour of the nominated successor company.

42. FORMAL TRANSFER OF LAND ETC., UNNECESSARY.

Where any asset to be transferred under Section 41(a) is land registered under the *Land Registration Act* (Chapter 191), the Registrar of Titles shall, without formal transfer and without fee, on application by the nominated successor company, enter or register the nominated successor company in the register kept under that Act and, on entry and registration, grant to the nominated successor company a certificate of title, lease or other instrument evidencing title to the land within that Act.

43. PAYMENTS GUARANTEED BY THE STATE.

Where any payment to be made by or obligation to be performed by the nominated enterprise has been guaranteed by the State and the obligation to make such payment or perform such obligation has been transferred to the nominated successor company, such guarantee shall be deemed to be at an end and of no further force and effect from the transfer date unless the Minister otherwise determines.

44. SALE OR TRANSFER OF ASSETS, ETC., OF SUCCESSOR COMPANY.

The sale or transfer of the assets of the successor company and the conduct of the successor company, shall, while the successor company is controlled by the Corporation, be in accordance with the Policy.

45. REPEAL.

On the transfer, pursuant to this part, of the whole of the undertaking of the nominated enterprise which is a statutory body established by Act, the Act pursuant to which such statutory body is established, except to the extent necessary to give effect to this Part, is repealed.

PART IX. - MISCELLANEOUS.

46. HEAD OFFICE.

The head office of the Corporation shall be located at such place in the country as the Board may from time to time determine.

Papua New Guinea Holdings Corporation

47. ATTORNEY.

The Corporation may, by instrument under its seal, appoint a person (whether within or outside the country) to be its attorney and, subject to any such instrument, a person so appointed may do any act or exercise or perform any power or function which he is authorised by such instrument so to do, exercise or perform.

48. GUARANTEE BY THE STATE.

The State shall be responsible for all moneys due by the Corporation, but this section does not authorize a creditor or other person claiming against the Corporation to sue the State in respect of any such claim.

49. CONFIDENTIALITY.

Information disclosed under this Act to the Minister, to a Director, to the Managing Director or to an officer of the Corporation shall not be disclosed to any other person without the prior written approval of the person who provided the information, except -

- (a) to the extent that disclosure is authorized or required under this Act or any other law; or
- (b) to the extent that the person providing the information authorized its disclosure at the time of providing the information; or
- (c) to the extent necessary for the Minister, Chairman or Managing Director to give advice to the National Executive Council or Central Bank on a confidential basis.

50. VALIDITY OF ACTS AND TRANSACTIONS OF THE CORPORATION.

The validity of any act or transaction of the Corporation shall not be called in question in any legal proceedings on the ground that any provision of this Act has not been complied with.

51. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act or for the conduct of business by the Corporation.

SCHEDULE 1.

Sec. 12

DECLARATION OF SECRECY.

I, _____, a member of the Board of Directors of Papua New Guinea Holdings Corporation, do solemnly and sincerely declare that I will at all times maintain secrecy in relation to the affairs of the Board and of Papua New Guinea Holdings Corporation and, in particular that I will not directly or indirectly or divulge any information that comes to my knowledge in the performance of my functions as a member of the Board, except by the authority of the Board or under compulsion or obligation of law.

Papua New Guinea Holdings Corporation

Declared at

Dated

19 .

(Signature of Declarant).

Before me:

(Signature of Person before whom declaration is made).

I hereby certify that the above is a fair print of the *Papua New Guinea Holdings Corporation Act 1992* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Papua New Guinea Holdings Corporation Act 1992* was made by the National Parliament on 11 August 1992.

Speaker of the National Parliament.