

[Legal Notice No. 82]

LEGAL NOTICE NO.....1996

THE MAROVO AREA COUNCIL DEVELOPMENT
AUTHORITY ORDINANCE 1996

Passed by the Western Provincial Assembly 22nd day of March
1996.

This printed impression has been carefully compared by me with
this Ordinance passed by the Western Provincial Assembly and
found by me to be the true copy of the said ordinance.

Eric M. Kikolo
Clerk to the Western Provincial Assembly

Assented to by the Honourable Minister for Provincial Government
this.....day of 1996.

Honourable Allan Qurusu
Minister for Provincial Government and Rural Development

Made Under Common Seal of the Western Provincial Assembly
this twenty first day of May 1996.

HONOURABLE THORNLEY HITE
Premier of Western Province

PROVINCIAL GOVERNMENT ACT 1981

THE MAROVO AREA COUNCIL DEVELOPMENT
AUTHORITY ORDINANCE 1996

AN ORDINANCE to establish a public authority known as the Marovo Area Council Development Authority.

ARRANGEMENT OF SECTIONS

Section

PART 1
PRELIMINARY

1. Short title and commencement.
2. Interpretation.

PART 2
ESTABLISHMENT, FUNCTIONS AND POWERS OF
AUTHORITY

3. Establishment of the Authority.
4. Purposes and Functions of the Authority.
5. Powers of the Authority.
6. Compliance with Policy and Regulations.
7. Prohibition of Interest.

PART 3
FINANCE

8. Funds to be established.
9. Sources of Funds.
10. Borrowing Powers.
11. Guarantees.
12. Prohibition of Lending.
13. Limitations on Investing.
14. Application of Funds.
15. Accounts, Audit and Annual Report.

PART 4
MISCELLANEOUS

16. Indemnity.
17. Subsidiary Legislation.

SCHEDULE 1. Directors of the Authority.

PART 1
PRELIMINARY

1. Title and Commencement - This Ordinance shall be cited as the Marovo Area Council Development Authority Ordinance 1996 and shall come into force upon approval by the Minister pursuant to Section 32 of the Provincial Government Act 1981 and publication in the Solomon Islands Gazette.

2. Interpretation - In this Ordinance except where the context otherwise requires:

“Area Council” means the Marovo Area Council constituted pursuant to the Western Province Area Councils Ordinance 1989.

“Assembly” means the Western Provincial Assembly.

“Authority” means the Marovo Area Council Development Authority.

“Director” has the same meaning as in the Companies Act (Cap 66) and as used in this Ordinance means a member of the Board of Directors of the Authority.

“Enterprise” means any commercial activity, business or undertaking carried on by a person or the Authority, whether or not for profit.

“Executive” means the Western Provincial Executive.

“financial interest” means the ownership of equity share capital or partnership interest in any enterprise.

“financial year” means the twelve months ending 31 March.

“General Manager” means the General Manager of the Authority appointed under this Ordinance.

“majority” means one half of the members plus one.

“person” means any public body, company or association and individuals, corporate or unincorporate.

“Premier” means the Premier of Western Province.

“Province” means the Western Province.

“Subsidiary” means any enterprise in which the Authority either is a member and controls the composition of its board of directors or holds more than half in nominal value of its equity share capital as more particularly defined in section 148 of the Companies Act (Cap 66).

PART 2
ESTABLISHMENT, FUNCTIONS AND POWERS OF THE
AUTHORITY

3. Establishment of the Authority - (1) This Ordinance establishes an authority to be known as the Marovo Area Council Development Authority which shall be a body corporate under that name with perpetual succession and a common seal; and which may in such name, sue or be sued, may enter into contract and subject to the provisions of this Ordinance may acquire, purchase, take, hold and enjoy real and personal property of every description and may convey, assign, surrender and yield up, charge, mortgage, transfer or otherwise dispose of, or deal with real property and may do all other things necessary for or incidental to its purposes and functions under this Ordinance.

(2) The Directors of the Authority shall be responsible for the policy and management of the Authority in accordance with the provisions of this Ordinance.

(3) Schedule 1 of this Ordinance shall govern the appointment and remuneration of Directors, General Manager and staff of the Authority, procedure and other matters concerning the Authority and its Directors.

4. Purposes and Functions of Authority - (1) The purposes of the authority shall be the furtherance of economic development in the area of the Area Council; promotion of agricultural, fishing, commercial and industrial enterprises; provision, maintenance or safeguarding of employment; and improvement of the quality of life of the people of the Marovo area.

(2) The functions of the Authority shall be to manage the agricultural, fishing, commercial, shipping, housing and industrial enterprises of the Area Council so as best to attain the purposes of the Authority.

5. Powers of the Authority - (1) Subject to any contrary provision contained in this Ordinance but not otherwise, the Authority may accomplish its purposes and perform its functions through the following powers:

- (a) appoint such employees and agents as it reasonably requires, upon such terms and conditions and on such remuneration as it thinks fit, subject to approval by the Area Council;
 - (b) acquisition, ownership and disposition of securities, equity and otherwise;
 - (c) formation of subsidiaries and other bodies corporate;
 - (d) formation of and /or acquisition of ownership interests in partnership and joint ventures;
 - (e) lending to enterprises and borrowing for itself, its subsidiaries or for any enterprises in which it has a financial interest;
 - (f) acting as agent or trustee for other persons;
 - (g) provision of or assisting in the provision of advisory or other services or facilities for any person, enterprise or undertaking including the acceptance of appointment of Directors of Boards of Directors of such persons, enterprises or undertakings;
 - (h) the establishment of charitable trusts for the benefit of the people of the area of the Area Council;
 - (i) guaranteeing the repayment of the principal, interest and other charges on any loan raised or made in accordance with the provisions of this Ordinance, for the purpose of carrying on any enterprise in which the Authority has a financial interest;
 - (j) charging of fees for services performed by the Authority;
 - (k) investing of money on call or for fixed or limited periods;
 - (l) fundraising by any legally recognised activity;
 - (m) appointing such employees and agents as it reasonably requires, upon such terms, conditions and remuneration as it thinks fit; and
 - (n) taking of any action which is calculated to accomplish the purposes of the Authority.
- (2) In exercising its functions and powers the Authority shall have regard to the objectives and policies set forth in any Area Council Development Plan.
- (3) The Executive may, after consultation with the Authority, by Order published in the Gazette, require the Authority to exercise such functions and powers not listed in section 4 or this section, as may be specified in the order and the Authority shall comply with the Order.

6. Compliance with Policy and Regulations - (1) All actions proposed to be taken by the Authority shall comply with the policies of the Authority and this Ordinance and all National and Provincial laws and the policies of the Area Council.

(2) Minutes of all meetings of the Authority shall be given to the Premier and to the President for the time being of the Area Council.

(3) A summary of all proposals which have been approved by the Directors involving loans, investments, guarantees or credit extension, to or by the Authority, its subsidiaries, corporate bodies formed by it or for any enterprise in which the Authority has a financial interest, shall accompany the minutes and be in a form acceptable to the Area Council. The proposal shall include information specified by the Area Council.

(4) If the Premier determines that a proposal does not comply with section 6(1) of this Ordinance, and if after consultation with the Directors, the Premier and the Authority are unable to reach an agreement as to whether a proposal complies with section 6(1), the Premier shall present the proposal to the Executive for its approval or disapproval and the decision of the Executive shall be final.

(5) From time to time, the Executive may make regulations regarding the maximum dollar limits of any one loan, grant, guarantee or extension of credit; terms and conditions acceptable for lending, borrowing and extensions of credit; property acceptable as collateral; credit worthiness of borrowers guarantee debtors; maximum limits or the percentage of equity ownership acceptable and/or necessary for Authority investment in enterprises; types of investments acceptable; the maximum aggregate amount of all sums borrowed, lent and/or guaranteed by the Authority; beneficiaries and activities of Charitable Trusts and other such financial and underwriting criteria.

(6) The Authority shall provide the Executive and the Area Council with such information relating to its activities or proposed activities as the Executive or the Area Council may from time to time require.

7. Prohibition of Interest- (1) Members of the Executive, Public Officers, Provincial Employees, Provincial Assembly members, Area Council members and Directors, staff and officers of the Authority,

including the General Manager, their spouses and children, are prohibited from holding any financial interest, direct or indirect, in any investments, loans, projects business pursuits, enterprises or transactions in which the Authority is involved or has an interest and any such prohibited interest held by the persons listed in this section shall be null and void or, at the sole discretion of the Authority, ownership of the prohibited investment shall be automatically transferred by forfeiture to the Authority.

(2) Directors, staff and officers of the Authority, including the General Manager, shall comply with all provisions of the Leadership Code.

PART 3 FINANCE

8. Funds to be established - (1) The Authority -

- (a) shall establish a general fund; and
- (b) may establish special funds for function, investment or enterprise authorised by the Ordinance.

(2) Each fund established under section 8(1)(b) shall be kept in a separate account.

(3) Monies from a fund established under section 8(1)(b) shall be used for any purpose except for that for which the fund was established.

9. Sources of funds - (1) The funds of the Authority shall consist of -

- (a) income earned from any investment or enterprise;
- (b) monies received by or falling due to the Authority in respect of any loan or guarantee made by it or the interest payable in respect of such loans or guarantee; and
- (c) any other monies from any source invested in or granted, donated or loaned to or otherwise earned by the Authority.

10. Borrowing Powers - (1) Subject to any regulation made pursuant to Section 6(5) the Authority and any subsidiary of the Authority may borrow for itself or for any enterprise in which it has a financial interest by way of temporary loan or overdraft such sums as are required to:

- (a) meet recurrent expenditures;
- (b) perform its functions under this Ordinance; and
- (c) provide for capital expenditures.

The total of sums borrowed under this subsection shall not exceed such sums as may be fixed by order of the Area Council.

11. Guarantees - (1) The Authority may, subject to the provisions of this Ordinance, guarantee as it sees fit the repayment of the principal, interest and other charges on any loan made by any person other than a Director, officer or employee of the Authority, Provincial Assembly member, Area Council member or officer of the Government or Province, their spouses or children, for the purpose of carrying on any enterprise in which the Authority has a financial interest.

(2) Any agreement of guarantee made in favour of a creditor must expressly stipulate that the Authority is executing the Agreement of Guarantee as a guarantor of the loan.

(3) Where, in discharge of its obligation as a guarantor of the loan under an agreement executed in accordance with the foregoing subsection (2), the authority makes any payment to the creditor of the amount guaranteed, the Authority shall be entitled to recover from the person for whom the Agreement of Guarantee is executed the amount so paid by it.

12. Prohibition of lending - The Authority may in no circumstances or on any terms lend money to Provincial Assembly members, Area Council member, Directors, officers and staff of the Authority, officers of the Government or Province, or their spouse or children.

13. Limitations on Investing - Subject to the provisions of this Ordinance, the Authority may invest the funds at its disposal in such manner and under such terms and conditions as it thinks fit but only inside the Solomon Islands.

14. Application of funds - (1) The Authority shall apply the funds at its disposal or such part of its fund as it thinks fit -

- (a) in the exercise of its functions; and,
- (b) to the payment of the remuneration, allowance and salaries of its members, officers, employees and agents and other recurrent and capital expenditures.

(2) At least 25 percent of the annual net profits of the Authority, as determined by the audit prescribed in section 15 of the this Ordinance, shall be put in a reserve fund as may be determined by the Area Council after consultation with the Authority.

(3) Any remaining net profit may be paid into the Fund of the Area Council or put in the reserve fund as may be determined by the Area Council after consultation with the Authority.

15. Accounts, Audit, and Annual Report - (1) The Authority shall keep proper books of account in which shall be true and full accounts of all its affairs and transactions.

(2) The books of account shall be kept at the office of the Authority or at such other place as the Directors in consultation with the Area Council, may direct.

(3) (a) The Authority shall prepare and submit to the Executive and the Area Council within three months after the end of each financial year a report on the Authority together with detailed profit and loss account showing classifications of revenue and expenditure, a balance sheet and such other statements of account as the Area Council may require.

(b) The annual report and all statements of account shall be signed by the Chairman and countersigned by the General Manager and the President of the Area Council.

(4) The Premier shall sign the annual report and statements of account on behalf of the Executive and transmit them to the Auditor General within nine months after the end of the financial year.

(5) (a) The Auditor General shall audit; certify and report on the annual report and statements of account and shall lay copies of them before the Area Council and Assembly together with his own report.

(b) The Auditor General and any other persons appointed by him to audit the accounts of the Authority may during the time of the audit -

(i) summon any Director, officer, employee or agent of the Authority to give such information as is necessary for the performance of the audit and

- (ii) require production of any records, books, accounts, vouchers and other documents of the Authority as is necessary for the performance of the audit.
- (6) (a) The Assembly shall refer the annual report statements of account and the Auditor General's report to the Provincial Accounts Committee, if any, which shall review them in accordance with the Western Province Financial Management Ordinance.
- (b) In reviewing such accounts and reports the Provincial Accounts Committee shall have the same powers as the Auditor General as stated in Section 1.5(5)(b) of this Ordinance.
- (7) If any Member of the Authority wilfully fails to take all reasonable steps to secure compliance with this section he shall be guilty of an offence and liable on conviction to a fine of \$100.00 or imprisonment for six months or to both such fine and imprisonment.

PART 4 MISCELLANEOUS

16. indemnity - Every director, officer, employee or agent of the Authority shall be indemnified out of the assets of the Authority against any expenses incurred by him

- (a) in defending any proceedings civil or criminal arising out of his duties to and/or employment by the Authority in which judgment is given in his favour or he is acquitted or he is granted relief by the court from liability because he has acted honestly, reasonably and within the scope of his authority; or
- (b) in applying to a court for relief when he believes a claim will be brought against him and he is granted relief as under paragraph (a).

17. Regulations - The Executive shall have the authority to make orders or regulations that may be necessary to effectively carry out this Ordinance.

SCHEDULE 1

The Directors of the Board of the Authority.

1. The Authority shall consist of the following:
 - (a) five voting Directors, each of whom shall have experience in commerce, industry, agriculture, finance or administration provided that no voting Director shall hold elected office in an Area Council, the Provincial Assembly, or Parliament, nor shall he be a public officer, Provincial Assembly officer or provincial government officer as defined in the Constitution;
 - (b) one *ex officio* non-voting Director, who shall be the General Manager appointed pursuant to paragraph 5 of this Schedule;
 - (c) for the purpose of obtaining advice on any particular matter, any person co-opted by the authority as a non-voting Director for such meetings as are required and while so co-opted the persons shall be entitled to an appropriate allowance as determined by the Authority.

2. (1) The voting Directors shall be appointed by the Area Council by notice published in the Gazette on such terms and conditions as may be specified in their respective letters of appointment for terms of not more than 3 years and may be reappointed at the end of the each term. No voting Director may be removed except pursuant to paragraph 4 of this Schedule.
 - (2) A voting Director may at any time by written notice to the Area Council resign his office.

3. (1) The Directors shall be entitled to remuneration in respect of their service to the Authority. The remuneration of the first Directors shall be set by the Area Council and may not be altered during the term of those first Directors. All subsequent remuneration shall be as set by the Authority with the approval of the Area Council and no subsequent remuneration shall be effective until the term of the Directors setting the remuneration has expired.
 - (2) The Directors shall be entitled for reimbursement for all reasonable travelling, accommodation and other expenses properly incurred by them in attending Authority meetings or in connection with the business of the Authority. In the event of a disagreement the Provincial Treasurer shall have the final decision on what is reasonable.

- (3) Remuneration and expenses payable under this paragraph 3 shall be paid out of the funds of the Authority.
4. (1) Subject to sub paragraph (2), a voting Director may be removed from office by the Area Council only if he or she -
 - (a) becomes bankrupt or suspends payment to his creditors;
 - (b) is absent from 2 consecutive Authority meetings without the written permission of the person presiding;
 - (c) becomes of unsound mind; or
 - (d) has committed any other misconduct or abuse of office, including but not limited to persistent disregard of any regulation promulgated under section 6(5) of this Ordinance or policies of the Authority, any other actions adversely affecting the Authority, or interfering with his ability to effectively perform as a Director.
 - (2) No voting Director shall be remove from office unless -
 - (a) a Magistrate, or in his absence the Provincial Secretary inquires into the allegation of bankruptcy, absence, unsound mind, misconduct or abuse of office; and
 - (b) the director has an opportunity to defend himself at such enquiry; and
 - (c) the person holding the enquiry recommends removal of the Director, or
 - (d) he is subject to automatic removal under sub paragraph 12(2) of this Schedule 1.
5. (1) The Directors shall appoint a General Manager for such term as they may think fit who shall have responsibility for the day to day management of the Authority, subject to the general or specific directions of the Directors.
 - (2) The terms, conditions and remuneration of the General Manager shall be set by the Directors with the approval of the Executive and may not be altered during the term of the General Manager's appointment.
 - (3) When by death, removal, resignation or otherwise the office of General Manager is vacant, the Directors may appoint an acting General Manager until such vacancy is filled.

6.
 - (1) The Area Council may appoint a person to act as an alternate Director during times the presence of Directors is excused due to illness or is otherwise unable to perform the duties of his office.
 - (2) During such period of incapacity the alternate Director shall have all the rights, remuneration and powers of the Director he is replacing to the exclusion of the absent Director.
 - (3) When the Director is again able to perform the duties of office, the alternate director appointed shall cease to be an alternate.
7.
 - (1) The Directors shall elect from among their members a Chairman and Deputy Chairman of the Authority.
 - (2) The Chairman shall preside at meetings of the Authority and in his absence the Deputy Chairman shall preside.
 - (3) If neither the Chairman nor Deputy Chairman are present, the members present shall appoint one of heir number to preside at that meeting who shall, for the meeting, have all the powers of the Chairman.
 - (4) The General Manager shall be the Secretary of the Board of Directors.
8.
 - (1) A majority of the voting Directors, including among that number the Chairman and Deputy Chairman, shall constitute a quorum.
 - (2) All acts or decisions of the Authority shall be determined by a majority of the votes of the Directors present at any meeting and in the event of an equality of votes the item being voted upon shall be defeated.
 - (3) The Directors shall meet at such times and places as shall be determined by the Chairman but not less than once every three months.
 - (4) The Authority may make Standing Orders for the conduct of its business.

9. In connection with the exercise of the functions of the Authority, the Directors may establish such committees as appear to be appropriate. Any such committee shall be composed of the Directors, voting and non-voting. The members of a committee shall not be entitled to additional remuneration.
10. The validity of and proceedings of the Authority shall not be affected by any vacancy among the Directors, defects or irregularities in the appointment of any Director.
11. The common seal of the Authority shall be kept in the custody of a person authorised by the Authority and shall be affixed to a document only in the presence of and with the authenticating signature of -
 - (a) the Chairman, and
 - (b) the General Manager.
12. (1) The Area Council shall satisfy itself by due enquiry before appointing a person to be Director or approving a person to be General Manager that such persons, their spouses and children have no financial or other interest, direct or indirect in any investments, loans, projects, business pursuits, enterprises or transactions in which the Authority is involved or have an interest other than their duties and functions as Directors or General Manager.
 - (2) Should it be discovered at any time that a Director or the General Manager or their spouses or children have direct or indirect interest in any investment, loans, projects, business pursuits, enterprises or transactions in which the Authority is involved or has an interest other than his duties and functions as a Director or General Manager that Director or General Manager shall be immediately relieved of his position at the Authority and that interest shall be subject to the conditions of section 7(1) of this Ordinance.

Enacted by the Western Provincial Assembly this day of.....
1996.

Clerk to Western Province Assembly

assented to by the Hon. Minister of Provincial Government and
Rural Development thisday of1996.

Minister of Provincial Government