

No. 8 of 2002.

***Community Services Trust Act 2002.***

Certified on: 10/5/2002.



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 8 of 2002.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Community Services Trust Act 2002,***

Being an Act to provide for the establishment of the Community Services Trust and to define its powers and functions, and for related purposes,

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

**PART 1. – PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates to a matter of national interest.

(2) This Act, to the extent that it regulates or restricts the exercise of a right or freedom referred to in Subdivision 111.3.C. (qualified rights) of the Constitution, namely –

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of expression and publication conferred by Section 46 of the *Constitution*; and
- (c) the right to peacefully assemble and associate and to form or belong to, or not to belong to, political parties, industrial organizations or other associations conferred by Section 47 of the *Constitution*; and
- (d) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48 of the *Constitution*; and

- (e) the right to reasonable privacy conferred by Section 49 of the *Constitution*; and
- (f) the right of reasonable access to official documents conferred by Section 51 of the *Constitution*,

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

- (g) integral human development; and
- (h) equality and participation; and
- (i) national sovereignty and self reliance; and
- (j) Papua New Guinean ways,

for the purpose of giving effect to the public interest in public order, public welfare and the development of under-privileged or less advanced groups or areas.

(3) This Act, to the extent that it creates or otherwise gives rise to rights, privileges, obligations or duties that are not the same as between citizens, is intended to be a law for the special benefit, welfare, protection and advancement of members of underprivileged and less advanced groups and residents of less advanced area for the purposes of Section 55 of the *Constitution*.

## 2. INTERPRETATION.

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

“**approved project**” means a project that is approved by the Board under Section 28; and

“**Board**” means the Community Services Trust Board established under Section 8 and

“**Chairman**” means the Chairman of the board for the time being appointed under Section 13; and

“**community**” means a community of people that live together in a rural or remote area of the country, or such other area of the country that the Board believes is not serviced by infrastructure, or infrastructure of a particular type, either adequately or at all; and

“**Community Contributions Account**” means the bank account referred to in Section 34(1)(b); and

“**contractor**”, in relation to a project, means a suitably qualified person to provide goods and services or goods or services for the project, that holds all consents, permits, licences and authorities required under any law of the State in relation to the conduct of the person’s business in the country; and

“**infrastructure**” includes –



- (a) telecommunications facilities and services; and
- (b) postal facilities and services; and
- (c) electronic communication facilities and services; and
- (d) electricity generation, transmission and distribution facilities and services; and
- (e) transport facilities and services, including roads, wharves, bridges and airstrips; and
- (f) banking facilities and services, including eftpos; and
- (g) water catchment, purification, transmission and distribution facilities and services; and
- (h) sewage collection, treatment and disposal facilities and services; and
- (i) buildings and building facilities and services; and
- (j) any facilities or services that are necessary for or incidental to the delivery of any of the facilities or services described in any of the preceding paragraphs; and

**“Manager”** means the Manager of the Community Services Trust appointed under Section 22, and includes an interim Manager under Section 22(6); and

**“operations and procedures guidelines”** means the guidelines adopted by the Board under Section 25(2), and includes the guidelines that are taken to be the operations and procedures guidelines under Section 25(6); and

**“project”**, in relation to a community, means a project that involves –

- (a) the construction, installation or provision of new infrastructure, or the improvement or repair of existing infrastructure, in each case to deliver services to the community; and
- (b) the ongoing delivery of services to the community using the infrastructure that is so constructed, installed, provided, improved or repaired; and

**“Project Account”** means the bank account referred to in Section 34(1)(a); and

**“project contract”** means a written contract between a community, one or more contractors, and the Trust, that sets out the terms and conditions for undertaking and implementing a project for the community; and

**“project selection guidelines”** means the guidelines adopted by the Board under Section 27(3), and includes the criteria and guidelines that are taken to be the project selection guidelines under Section 27(3); and

**“public notice”** means a notice published in a newspaper generally circulating in Port Moresby chosen by the Board for the purpose; and

**“relevant community”**, in relation to a project or a proposed project, means the community to which the project or proposed project relates; and

**“this act”** includes any regulations made under it; and

**“Trust”** means the Community Services Trust established under Section 4.

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

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

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

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

**3. ACT BINDS THE STATE.**

This Act binds the State.

**PART 2. – THE COMMUNITY SERVICES TRUST.**

***Division 1.***

***Community Services Trust.***

**4. ESTABLISHMENT OF THE COMMUNITY SERVICES TRUST.**

(1) The Community Services Trust is established.

(2) The Community Services Trust -

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

(b) is to have a common seal; and

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

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

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

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

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

(6) Subject to this Act, the Trust is an organ and instrument of the State and is entitled to the benefit of any immunity or privilege enjoyed by the State.

(7) It is declared that the Trust is an agency of the National Government and therefore a governmental body within the meaning of Schedule 1.2 of Part 2 of Schedule 1 (Rules for Shortening and Interpretation of the Constitutional Laws) of the Constitution.

**5. FUNCTIONS OF THE COMMUNITY SERVICES TRUST.**

The Functions of the Trust are –

(a) to assist communities to assess and determine what projects, if any, might feasibly and effectively be undertaken and implemented in the area within which the community lives, and if appropriate, to formulate a proposed project and to identify contractors that may be willing and able to undertake the proposed project; and

(b) to assist relevant communities to assess whether they are able to meet the capital and ongoing operational costs of a proposed project have regard to contributions that may be made to the capital cost of the proposed project by the Trust under this Act or by any other person; and

(c) to assist relevant communities to collect from among their members and from any other sources of funds that may lawfully be available to them

to meet their share of the capital cost of a proposed project or any approved project; and

- (d) to contribute to the capital cost of approved projects; and
- (e) to assist relevant communities in relation to negotiating and entering into project contracts with contractors for approved projects; and
- (f) to enter into project contracts for approved contracts; and
- (g) to monitor the undertaking and implementation by all parties of approved projects and the delivery of ongoing services under and during the term of project contracts; and
- (h) to assist communities that have entered into project contracts in relation to negotiating arrangements with contractors for the ongoing provision of services from the infrastructure the subject of their project contracts after they expire; and
- (i) to co-operate and liaise with other government and non-government agencies and organisations in relation to the establishment and funding of infrastructure in rural and remote areas of the country; and
- (j) to carry out such functions as are given to the Trust by this Act or by any other law; and
- (k) generally to do such supplementary, incidental, or consequential acts and things as are necessary or convenient for the Trust to carry out its functions.

## **6. POWERS OF THE COMMUNITY SERVICES TRUST.**

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

## **7. TRUST NOT A DEPARTMENT.**

The Trust is not a Department of the Public Service.

### *Division 2.*

#### *Community Services Trust Board.*

## **8. COMMUNITY SERVICES TRUST BOARD.**

(1) There is established a board for the Trust to be called the Community Services Trust Board.

(2) The Board is to perform the functions, exercise the powers and manage and direct the affairs of the Trust.

(3) Subject to this Act, the Board is not subject to direction or control by any person or authority in the exercise and performance of its functions and the exercise of its powers under this Act.

**9. MEMBERSHIP OF THE BOARD.**

(1) The Board is to consist of not more than eight members, comprising -

- (a) the Departmental Head of the Department responsible for treasury matters or his nominee, ex officio; and
- (b) the Departmental Head of the Department responsible for national planning and monitoring matters or his nominee, ex officio; and
- (c) one person appointed by the Auditor General; and
- (d) one person appointed by the Governor for the time being of the Central Bank; and
- (e) one person appointed by the Chairman for the time being of the Papua New Guinea chapter of Transparency International; and
- (f) one person appointed by the President for the time being of the Papua New Guinea Chamber of Commerce; and
- (g) one person appointed by the Head for the time being of the Papua New Guinea Council of Churches; and
- (h) one person appointed by the Secretary General for the time being of the Commonwealth of Nations.

(2) A person appointed to be a member of the Board under Subsection (1) –

- (a) is to be appointed by an instrument in writing; and
- (b) must be ordinarily resident in the country; and
- (c) must be of integrity and good moral standing; and
- (d) must be of generally recognised standing, experience and expertise in matters relevant to the functions of the Trust, such as economics, economic and social development, financial management or law; and
- (e) is eligible for re-appointment, except where the person has served three terms (whether successive or otherwise) in office as a member of the Board.

(3) In considering the appointment of a person as a member of the Board under Subsection (1), the appointor must have regard to the person's knowledge, skill and experience, and the likelihood of any conflict between the interests of the Trust and any interests that the person has or represents.

(4) The appointor of a member of the Board under Subsection (1) whose appointment is terminated for any reason under Section 15, may appoint another person in place of the member whose appointment is terminated, and any person so

appointed will hold office for the residue of the term of the member whose appointment was terminated.

(5) The appointor of a member of the Board under Subsection (1) may not terminate the appointment of the member.

#### **10. TERM OF OFFICE OF MEMBERS OF THE BOARD.**

(1) Subject to Subsection (2), a person appointed to be a member of the Board under Section 9(1) will hold office for a term of three years.

(2) At the first meeting of the Board after the coming into operation of this Act, the Board must choose by lot two of its members whose first term of office will be one year, and three of its members whose first term of office will be two years, and the members so chosen will hold office accordingly for a term of one year and two years respectively.

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

A person may not be appointed as a member of the Board under Subsection (1) if the person –

- (a) is, or within five years before the time of the proposed appointment has been, a member of Parliament, a member of a Provincial Government, a Provincial Governor, a Provincial Administrator or a member of a Local-level Government; or
- (b) is, or within five years before the time of the proposed appointment has been, an office-holder in a registered political party; or
- (c) is a Departmental Head or an officer of the Public Service; or
- (d) is a Judge; or
- (e) is a parent, child, sibling or cousin of a person who is a current member of the Board, or a parent, child or sibling of such a person; or
- (f) is or has been bankrupt, or has applied to take the benefit of any law for the benefit of bankrupt or insolvent debtors, or has compounded with his creditors or made an assignment for their benefit; or
- (g) is seventy years of age or over; or
- (h) is standing or to stand trial for, or has been convicted of, any offence punishable under a law by imprisonment; or
- (i) is prohibited from being a director or member or promoter of, or from taking part (in any way, whether directly or indirectly) in the management of, a company under any law of the State; or
- (j) has his affairs administered under any law relating to mental health.

**12. FEES AND EXPENSES OF MEMBERS OF THE BOARD.**

(1) As soon as practicable after the coming into operation of this Act, the Manager must recommend to the Minister an appropriate fees to be paid under the *Boards (Fees and Allowances) Act 1955* (Chapter 299) to each member of the Board, other than an ex officio member, having regard to the functions, duties and responsibilities of the members of the Board under this Act.

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

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

**13. CHAIRMAN.**

(1) The Board may from time to time appoint one of its members to be the Chairman of the Board, and determine the period for which the member so appointed is to hold office as Chairman of the Board.

(2) The Chairman holds office as Chairman until the earlier of the expiration of the period of his appointment or until he ceases to be a member of the Board.

**14. LEAVE OF ABSENCE OF MEMBERS.**

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

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

**15. VACATION OF OFFICE BY MEMBERS OF THE BOARD.**

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

(2) If a member of the Board, other than an ex officio member –

(a) dies or becomes permanently incapable of performing his duties; or

(b) resigns his office in accordance with Subsection (1); or

(c) is absent, except with the written consent of the Board or with leave under Section 14, from three consecutive meetings of the Board; or

(d) does not comply with Section 19; or

(e) becomes a person who is not eligible under Section 11 to be appointed as a member of the Board; or

(f) ceases to be ordinarily resident in the country; or

(g) commits an offence against this Act,

his appointment as a member of the Board (and as Chairman, if the member is also the Chairman) will be taken to have been terminated with immediate effect.

(3) The Minister may at any time, by written notice, advise a member (other than an ex officio member) that he intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour.

(4) Within 14 days of the receipt of a notice under Subsection (3), the member may reply in writing to the Minister, who shall consider the reply, and, where appropriate, terminate the appointment.

(5) Where the member referred to in Subsection (3), does not reply in accordance with Subsection (4), his appointment is terminated.

#### **16. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.**

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

#### **17. SECRETARY OF THE BOARD.**

The Board is to engage an appropriately qualified person (who may be the Manager or a partner, employee or agent of the Manager) to be the secretary of the Board, who is to be responsible for convening meetings of the Board and for recording minutes of those meetings, and generally to perform a secretarial function for the Board

#### **18. MEETINGS OF THE BOARD.**

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

(2) At a meeting of the Board –

- (a) five members constitute a quorum; and
- (b) the Chairman is to preside and if the Chairman is absent, the members present may appoint from among themselves a chairman for that meeting; and
- (c) subject to Paragraph (e), each member of the Board has one vote; and
- (d) subject to Section 25(3), Section 25(5), Section 27(4) and Section 27(6), matters arising are to be decided by a majority of the votes of the members present and voting; and
- (e) the person presiding has a deliberative vote, and if there is an equality of votes on any matter, also a casting vote.

(3) The Board is to cause minutes of its meetings to be recorded and kept.

(4) Subject to this Act, the procedures of the Board are to be as determined by the Board.



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

(1) A member of the Board who has a direct or indirect interest in a matter being considered or about to be considered by the Board must, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) Any disclosure under Subsection (1) is to be recorded in the minutes of the relevant meeting of the Board, and the member making the disclosure –

- (a) may not participate, after the disclosure, in any debate, deliberation, decision or vote of the Board in relation to the matter during the meeting at which the disclosure is made or at any other meeting of the Board; and
- (b) is to be disregarded for the purpose of determining whether a quorum is present for the meeting of the Board at which the disclosure is made or at any other meeting of the Board or any such debate, deliberation, decision or vote in relation to the matter.

**20. COMMITTEES OF THE BOARD.**

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

(2) In establishing a committee under Subsection (1), the Board may –

- (a) appoint such persons as it considers necessary; and
- (b) specify the functions and procedures of the committee.

(3) A member of a committee who is not a member of the Board may receive fees and allowances under the *Boards (Fees and Allowances) Act 1955*.

**21. REPORTS.**

The Board is to furnish to the Minister, in addition to the annual report under Section 39, such other reports in relation to the functions of the Trust as are reasonably requested by the Minister from time to time.

***Division 3.***

***Manager.***

**22. MANAGER.**

(1) There will be a Manager of the Trust who is to be appointed by the Board in accordance with Section 23.

(2) The Trust must advertise the appointment of a Manager under Subsection (1), and the name and address of the Manager so appointed, in a public notice as soon as practicable, and in any event with fourteen days, after the appointment is made.

(3) The Manager is responsible to the Board for the efficient carrying out of the functions of the Trust.

(4) The Manager is to be appointed for a term of four years under a written contract of service on such terms and conditions (including as to remuneration and early termination) as are determined by the Board, and will be eligible for reappointment.

(5) The Manager must, during the Manager's term of appointment, maintain an office in the country that is suitable for the purpose of the Manager performing its functions, powers, duties, responsibilities and obligations under this Act.

(6) The Board must appoint –

(a) the first Manager after the coming into operation of this Act; and

(b) a new Manager after any termination of the appointment of an incumbent Manager that occurs before the end of the incumbent Manager's four year term of appointment,

as soon as practicable, and pending these appointments, the Manager in the interim will be such person as is determined by the Board who must be engaged under a written consent of service on such terms and conditions as are determined by the Board.

### **23. APPOINTMENT OF MANAGER.**

(1) The Board must by public notice call for written tenders from interested persons to be appointed as Manager under a contract of service under this Act –

(a) as soon as practicable after the coming into operation of this Act; and

(b) as soon as practicable after any termination of the appointment of an incumbent Manager that occurs earlier than six months before the end of the incumbent Manager's four year term of appointment; and

(c) not later than six months before the end of the incumbent Manager's four year term of appointment,

such tenders to contain such information and to be in such form as the Board reasonably considers appropriate and as specified in the public notice.

(2) The Board must give consideration to all written tenders received by the date specified as being the closing date for the submission of tenders in the public notice under Subsection (1), and may choose them from among the persons that so tendered the persons to be appointed as Manager having regard to -

(a) the reputation, expertise, skill and experience; and

(b) the level of proposed remuneration; and

(c) the ability and capacity completely and efficiently to meet and perform the functions, powers, duties, responsibilities and obligations of the Manager under this Act and the proposed form of the Manager's contract of service,

of each of the persons that tendered, and to such other relevant considerations as the Board considers appropriate or that may be prescribed.

**24. FUNCTIONS OF THE MANAGER.**

(1) The functions, powers, duties, responsibilities and obligations of the Manager are -

- (a) to manage the Trust in accordance with this Act and the policy and direction of the Board; and
- (b) to advise the Board on any matter concerning the Trust referred to the Manager by the Board; and
- (c) otherwise as specified in this Act.

(2) The Manager –

- (a) must carry out and perform the functions, powers and duties required of the Manager under this Act and the Manager's contract of service; and
- (b) has such other functions, powers and duties as the Board may from time to time determine.

**PART 3. – OPERATIONS AND PROCEDURES.**

**25. OPERATIONS AND PROCEDURES GUIDELINES.**

(1) The Board, in consultation with the Manager, is to formulate guidelines that are not inconsistent with this Act and the project selection guidelines and that set out operational and procedural guidelines for the way in which the Board is to perform its functions, exercise its powers, and manage and direct the affairs of the Trust under this Act, including guidelines for the procedures to be followed in relation to determining whether to approve proposed projects for the purposes of this Act.

(2) The Board is to adopt guidelines formulated under Subsection (1) as soon as practicable after the coming into operation of this Act.

(3) The Board will be taken not to have adopted guidelines under Subsection (2) unless at least three quarters of all of the members of the Board voted in favour of a resolution to adopt the guidelines, as set out in the resolution, at a meeting of all of the members of the Board.

(4) The Board may amend the operation and procedures guidelines from time to time.

(5) The Board will be taken not to have amended the operations and procedures guidelines under Subsection (4) unless at least three quarters of all of the members of the Board voted in favour of a resolution to amend the guidelines, as set out in the resolution, at a meeting of all the members of the Board.

(6) Until the Board adopts guidelines under Subsection (2), the operations and procedures guidelines will be taken to be the operational and procedural guidelines for the way in which the Board is to perform its functions, exercise its powers, and manage and direct the affairs of the Trust under this Act set out in a notice in the National Gazette by the Minister, acting with, and in accordance with, the advice of the National Executive Council.

(7) The Board, in performing its functions, exercising its powers, and managing and directing the affairs of the Trust under this Act, must have regard to and apply the operations and procedures guidelines.

**PART 4. – PROJECTS.**

**26. APPLICATION FEE.**

(1) The Board may require a community that applies for the approval of a proposed project for the purposes of this Act to pay to the Trust an application fee of not more than K200.00 or such other amount as may be prescribed.

(2) Any amount paid to the Trust by way of an application fee under Subsection (1) is not refundable in any circumstances.

**27. PROJECT SELECTION GUIDELINES.**

(1) In determining whether to approve a proposed project for the purposes of this Act, the Board must have regard to the following matter –

- (a) the level of participation by the relevant community, and individual members of the relevant community, in the proposed project;
- (b) the infrastructure needs of the relevant community and the extent to which the proposed project would service those needs;
- (c) the extent to which the relevant community already has access to existing infrastructure, including infrastructure of the type that is the subject of the proposed project;
- (d) where the proposed project involves improving existing infrastructure, the extent to which that existing infrastructure is adequate;
- (e) the benefits that the proposed project would bring to the relevant community and any other community;
- (f) whether the proposed project would primarily benefit one individual, family or interest group within the relevant community;
- (g) the extent to which all members of the relevant community would benefit from the proposed project;
- (h) the extent to which the proposed project might be co-ordinated with another proposed project;
- (i) the level of the proposed contribution by the relevant community to the capital cost of the proposed project;
- (j) the ability of the relevant community to make its proposed contribution to the capital cost of the proposed project;
- (k) the extent to which the relevant community can make available any land that is required for the purposes of the proposed project;
- (l) whether the relevant community is likely to be able to meet the requirements of Section 29(1) and (2) in relation to the proposed project if it is approved for the purpose of this Act;
- (m) the extent to which the proposed project is cost efficient;

(n) any other matter that the Board believes to be relevant.

(2) The Board, in consultation with the Manager, is to formulate guidelines that are not inconsistent with this Act and that set out –

(a) criteria in relation to the matters set out in Subsection (1) that must be met in relation to a proposed project for the proposed project to qualify for approval for the purposes of this Act; and

(b) guidelines for assessing, weighting and ranking proposed projects in terms of matters set out in Subsection (1) in determining whether to approve them for the purposes of this Act.

(3) The Board is to adopt guidelines formulated under Subsection (1) as soon as practicable after the coming into operation of this Act.

(4) The Board will be taken not to have adopted guidelines under Subsection (3) unless at least three quarters of all of the members of the Board voted in favour of a resolution to adopt the guidelines, as set out in the resolution, at a meeting of all of the members of the Board.

(5) The Board may amend the project selection guidelines from time to time, except to the extent that the amended project selection guidelines would cease to comply with Subsection (2).

(6) The Board will be taken not to have amended the project selection guidelines under Subsection (5) unless at least three quarters of all of the members of the Board voted in favour of a resolution to amend the guidelines, as set out in the resolution, at a meeting of all of the members of the Board.

(7) Until the Board adopts guidelines under Subsection (3), the project selection guidelines will be taken to be –

(a) the criteria in relation to the matters set out in Subsection (1) that must be met in relation to a proposed project for the proposed project to qualify for approval for the purposes of this Act; and

(b) the guidelines for assessing, weighting and ranking proposed projects in terms of the matters set out in Subsection (1) in determining whether to approve them for the purposes of this Act,

set out in a notice in the National Gazette by the Minister, acting with, and in accordance with, the advice of the National Executive Council.

## **28. APPROVAL OF PROJECTS.**

(1) Subject to this Section, the Board may approve a proposed project for the purposes of this Act, and may do so subject to such conditions, if any, that the Board considers appropriate.

(2) In deciding whether to approve a proposed project for the purposes of this Act, the Board must have regard to the limits of the Trust's resources and funds, and must have regard to and apply the project selection guidelines.

(3) The Board is under no obligation to approve any proposed project for the purposes of this Act.

(4) The Board may not approve a proposed project for the purposes of this Act if the Board believes that the proposed project does not qualify for approval under the project selection guidelines.

(5) The Board may not approve a proposed project for the purposes of this Act unless the proposed contractors for the proposed project have been selected under a competitive tender process determined by the Board.

## **29. FUNDING OF APPROVED PROJECTS AND AVAILABILITY OF LAND.**

(1) The relevant community must contribute, in cash, an amount that is not less than twenty per cent of the capital cost of the project, towards meeting the capital cost of an approved project, in such manner as the Board determines and as set out in the project contract for the approved project.

(2) If, in relation to an approved project, any temporary or permanent access to any land is required in relation to the project, the relevant community must ensure that access to the land is made available as so required for the purposes and for the duration of the project, without any compensation or payment being required to be made by the Trust or any contractor to any person including the relevant community and any member of the relevant community.

(3) The Trust may contribute an amount that is no more than –

(a) the amount contributed by the relevant community under Subsection (1), or forty per cent of the capital cost of the project, whichever is the lesser; or

(b) such other amount as may be prescribed,

towards meeting the capital cost of an approved project, in such manner as the Board determines and as set out in the project contract for the approved project.

(4) The Board may require the relevant community in relation to a proposed project to deposit with the Trust such amounts as the Board may determine at such times as the Board may determine by way of a deposit in respect of the relevant community's obligations under Subsection (1).

(5) The Trust may not pay or contribute in any way to any operational costs of a project such as tariffs or service or maintenance fees or charges.

(6) If the Board decides that it will not approve a proposed project for the purposes of this Act, or the relevant community notifies the Trust that it does not wish to proceed with the proposed project, or for any reason an approved project does not proceed, the Trust must refund to the relevant community in full any and all amounts deposited with the Trust by the relevant accrued thereon in the Community Contributions Account, less any amount that the Trust has lawfully paid from any such amount to any other person.

**30. PROJECT CONTRACTS.**

(1) As soon as practicable after the Board approves a proposed project for the purposes of this Act, the relevant community, the Trust, and the relevant contractors must enter into a project contract in respect of the approved project.

(2) Without limitation to what other provisions may be contained in a project contract in respect of an approved project, the project contract must provide for –

- (a) the ownership of the infrastructure that is the subject of the project; and
- (b) the contractor contribution, if any, to the capital cost of the project; and
- (c) the service levels to be provided by the contractor; and
- (d) the service fees and charges (if any) that are to be payable by the relevant community to the relevant contractor for the provision of ongoing services, and the way, if any, in which any such fees or charges are to be reviewed; and
- (e) the responsibility as between the relevant community and the relevant contractor for the security and maintenance of the infrastructure that is the subject of the project; and
- (f) the method of determining any disputes that arise in relation to the project or the project contract; and
- (g) the manner in which each party will be making its contribution to the capital cost of the project; and
- (h) the term of the project contract and what, if any, rights or options any party has to terminate or extend the term of the project contract.



**PART 5. – FINANCES.**

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

(1) Without limitation to any function or power of the Trust under this Act, Part VIII of the *Public Finances (Management) Act 1995* does not apply to or in relation to the Trust.

(2) Subject to Subsection (1), the *Public Finances (Management) Act 1995* does not apply to or in relation to the Trust.

(3) The sum of K100,000.00 is specified for the purposes of Section 59 of the *Public Finances (Management) Act 1995*.

**32. INVESTMENTS AND BORROWING.**

(1) Moneys of the Trust that are not immediately required may be invested in any manner and on such terms that the Board may determine.

(2) The Trust may not borrow money.

**33. FUNDS OF THE TRUST.**

(1) The funds of the Trust consist of –

- (a) all moneys appropriated by Act for the purposes of carrying out or giving effect to this Act; and
- (b) all moneys received by the Trust by way of grants and subscription; and
- (c) all moneys received by the Trust from communities under this Act, including under Section 26(1) and Section 29(1); and
- (d) all moneys received by the Trust from investments; and
- (e) any interest accrued in respect of funds standing to the credit of any of the Trust's bank accounts, including the Project Account and the Community Contributions Account; and
- (f) all other moneys received by the Trust in the exercise and performance of its powers, functions and duties under this Act.

(2) The Trust is to retain any profits made by the Trust from its operations or activities.

(3) Subject to Section 34, the funds of the Trust may be expended only –

- (a) in payment or discharge of expenses, obligations and liabilities of the Trust; and
- (b) in the performance of the functions of the Trust under and in accordance with this Act; and

- (c) in contributing to the capital cost of an approved project in accordance with this Act, either on its own account or on behalf of the relevant community; and
- (d) in payment of the remuneration of the Manager, and any other amounts payable to the manager, under and in accordance with the Manager's contract of service; and
- (e) in payment of fees and expenses payable to the members of the Board under this Act; and
- (f) in payment of fees and allowances payable to a member of a committee of the Board under this Act; and
- (g) in making investments permitted to be made by the Trust by this Act or any other Act; and
- (h) for such other purposes as are consistent with the functions of the Trust as the Board may determine,

and then only with the prior approval of the Board which may be given either generally in relation to a specified class of expenditure or payments, or specifically in relation to a particular expenditure or payment.

#### **34. PROJECT ACCOUNT AND COMMUNITY CONTRIBUTION ACCOUNT.**

(1) Without limitation to other bank accounts that may be established, maintained and operated by the Trust, the Trust must establish and maintain the following bank accounts –

- (a) a Project Account; and
- (b) a Community Contribution Account.

(2) There is to be deposited into the Project Account –

- (a) such amounts as may be appropriated by Act for the purpose of the Trust contributing towards meeting the capital cost of approved projects under this Act; and
- (b) all moneys received by the Trust by way of grants and subscriptions for the purpose of the Trust contributing towards meeting the capital cost of approved projects under this Act; and
- (c) any interest accrued in respect of funds standing to the credit of the Project Account.

(3) There is to be deposited into the Community Contribution Account all moneys received by the Trust from communities under this Act, including under Section 29(1) but excluding under Section 26(1), and the Trust must maintain full and complete records of all moneys so received including the date of receipt of the moneys, the community from which the moneys are received, and the project or proposed project to which the moneys relate.

(4) The funds of the Trust standing to the credit of the Project Account may be expended only –

- (a) in payment of the Trust's contribution towards meeting the capital cost of an approved project under and in accordance with this Act; and
- (b) in payment of any bank fees and charges that may be applicable to the Project Account.

(5) The funds of the Trust standing to the credit of the Community Contributions Account may be expended only –

- (a) in payment by the Trust on behalf of a relevant community of the relevant community's contribution towards meeting the capital cost of an approved project under and in accordance with this Act, and then only to the extent that the Trust has received and deposited in the Community Contributions Account money, and any interest accrued thereon in the community Contributions Account, from the relevant community in respect of the approved project; and
- (b) in payment by the Trust to a relevant community of money received by the Trust from that community and deposited in the Community Contributions Account in respect of the relevant community's contribution towards meeting the capital cost of a proposed project that has not been approved for the purposes of this Act or an approved project that has not proceeded, and any interest accrued thereon in the Community Contributions Account,

and may not be expended in payment of any bank fees and charges that may be applicable to the Community Contributions Account, which are to be paid by the Trust from its other funds (other than those standing to the credit of the Project Account).

### **35. LIABILITY TO TAXATION.**

(1) The income of the Trust is exempt from income tax for the purposes of the *Income Tax Act 1959*.

(2) For the purposes of the *Income Tax Act 1959*, an amount equal to any amount paid, or the cost of any asset contributed, to the Trust by way of an unconditional donation or grant for the Trust's purposes, may be claimed, and will be allowed, as an allowable deduction under Section 68 of the *Income Tax Act 1959* from the assessable income of the person that paid the amount or contributed the asset in the year of payment or contribution, as the case may be.

(3) Tax on any supply made by the Trust is to be charged at the rate of zero percent for the purposes of the *Value Added Tax Act 1998*.

(4) Without affecting the liability of any other party to an instrument, the Trust is not liable to pay duty under the *Stamp Duties Act (Chapter 117)*.

**PART 6. – FINANCIAL REPORTING, ACCOUNTING RECORDS, ANNUAL REPORT AND AUDIT.**

***Division 1.***

***Interpretation.***

**36. INTERPRETATION.**

In this Part, unless the contrary intention appears –

“**balance date**” means the close of 31 December; and

“**financial statements**” in relation to the Trust and the balance date means –

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

together with any notes or documents giving information in relation to the balance sheet or statement; and

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

***Division 2.***

***Preparation of financial statements .***

**37. PREPARATION OF FINANCIAL STATEMENTS.**

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

- (a) completed in relation to the Trust and that balance date; and
- (b) dated and signed on behalf of the Board by the Chairman, pursuant to a resolution of the Board.

(2) The financial statement of the Trust are to comply 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 Board is to add such information and explanations as will give a true and fair view of those matters.

***Division 3.***

***Accounting records.***

**38. ACCOUNTING RECORDS TO BE KEPT.**

(1) The Board is to cause accounting records to be kept that –

- (a) correctly record and explain the transactions of the Trust; and
  - (b) will at any time enable the financial position of the Trust to be determined with reasonable accuracy; and
  - (c) will enable the Board to ensure that the financial statements of the Trust comply with Section 37; and
  - (d) will enable the financial statements of the company to be readily and properly audited.
- (2) Without limiting Subsection (1), the accounting records are to contain –
- (a) entries of money received and spent each day and the matters to which it relates; and
  - (b) a record of the assets and liabilities of the Trust.
- (3) The accounting records are to be kept –
- (a) in written form; or
  - (b) in a form or manner in which they are easily accessible and convertible into written form.
- (4) The Trust is to keep accounting records for the current accounting period and for the last five completed accounting periods of the Trust.

***Division 4.***

***Annual Report.***

**39. PREPARATION OF ANNUAL REPORT.**

The Board within six months after each balance date of the Trust, is to furnish to the Minister an annual report on the affairs of the Trust during the accounting period ending on that date.

**40. CONTENT OF ANNUAL REPORT.**

Each annual report of the Trust is to be in writing and dated and is to –

- (a) include a report on the performance and management of the operations and activities of the Trust during the accounting period; and
- (b) describe all projects approved for the purposes of this Act during the accounting period, and in respect of each such project, set out the reasons why the project was approved; and
- (c) describe all proposed projects considered for approval by the Board for the purposes of this Act during the accounting period that were not so approved (other than proposed projects in respect of which the Board's decision about whether to approve was pending as at the balance date), and in respect of each such proposed project, set out the reasons why the proposed project was not approved; and

- (d) set out the operations and procedures guidelines as at the balance date, and describe any amendments to the operations and procedures guidelines made during the accounting period and set out the reasons why any such amendments were made; and
- (e) set out the project selection guidelines as at the balance date, and describe any amendments to the project selection guidelines made during the accounting period and set out the reasons why any such amendments were made; and
- (f) include financial statements for the accounting period completed and signed in accordance with Section 39; and
- (g) describe any change in accounting policies made during the accounting period; and
- (h) state particulars of any interest disclosed by a member of the Board under Section 19(1) during the accounting period; and
- (i) state, in respect of each member or former member of the Board, the total of the remuneration and the value of other benefits received by that member or former member during the accounting period; and
- (j) state the total amount of any donations made or commissions paid by the Trust during the accounting period; and
- (k) state the names of the persons holding office as members of the Board at the end of the accounting period and the name of any person who ceased to hold office as member of the Board during the accounting period; and
- (l) be signed on behalf of the Board by the Chairman.

#### **41. AVAILABILITY OF ANNUAL REPORT.**

(1) Any annual report of the Trust which is furnished to the Minister under Section 39 is a public document.

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

(3) The fee under Subsection (2) may not exceed K20.00, or such other higher amount as may be prescribed.

### ***Division 5.***

#### ***Audit.***

#### **42. AUDIT..**

(1) Nothing in this Section affects the application to the Trust of the *Audit Act 1989*.

(2) The Board must appoint a member of a reputable accounting firm with a full service office in Port Moresby, who is a Registered Company Auditor under the

*Accountants Act 1996* and who is ordinarily resident in the country, to be the auditor of the Trust to audit the financial statements of the Trust from time to time.

(3) The auditor appointed under Subsection (2) is to –

- (a) be appointed for a term of one year; and
- (b) hold office on such terms and conditions as are determined by the Board from time to time; and
- (c) is eligible for re-appointment.

(4) The Board must appoint –

- (a) the first auditor of the Trust as soon as practicable after the coming into operation of this Act; and
- (b) a new auditor of the Trust as soon as practicable after any vacancy in the office of the auditor of the Trust arises.

(5) Each member of the Board is jointly and severally responsible for complying with Subsections (2) and (4).

(6) Sections 192, 193, 198, 199, 200 and 202 of the *Companies Act 1997* as in force as at the time of the coming into operation of this Act apply in relation to an auditor appointed under Subsection (2) as if -

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

**PART 7. – MISCELLANEOUS.**

**43. PROOF OF CERTAIN MATTERS.**

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

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

**44. SERVICE OF PROCESS.**

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

**45. AUTHENTICATION OF DOCUMENTS.**

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

**46. APPOINTMENT OF ATTORNEYS.**

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

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

**47. RECOVERY OF MONEY DUE.**

Any money due to the Trust (including all funds of the Trust under Section 33(1)) may be recovered by the Trust as a debt.

**48. PROTECTION FROM PERSONAL LIABILITY.**

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



**49. GENERAL PENALTY.**

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

(2) A person which or who commits an offence against this Act for which no penalty is provided elsewhere in this Act is liable to a penalty of a fine not exceeding K25,000.00 or to imprisonment for a term not exceeding two years, or to both, and where the offence is a continuing one, is further liable to a default penalty of a fine no exceeding K2,500.00 for each day during which the offence is committed after conviction.

**50. INFORMATION.**

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

- (a) any information, books or records in the possession or custody or under the control of a person is or are relevant to the exercise or performance of the powers or functions of the Trust or to the achievement of the purposes of this Act; and
- (b) it is desirable that the information be furnished to the Trust or that the books or records be produced for inspection by the Trust,

the Trust may issue to the person a written notice to that effect specifying the relevant information, books and records and specifying the place and time at which an information, books and records are to be furnished or produced to the Trust.

(2) A person who received a notice under Subsection (1) is to furnish or produce for inspection at the place and at the time specified in the notice the information, books and records specified in the notice and copies of or extracts from any information, book and records to furnished or produced may be made and retained by the Trust.

(3) The Trust or its employees may take copies of and extracts from any information, books or records furnished or produced under Subsection (2).

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

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

Penalty: A fine not exceeding K10,000.00

Default penalty: A fine not exceeding K1,000.00

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

**51. FALSE STATEMENTS.**

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

Penalty: A fine not exceeding K50,000.00

**52. REGULATIONS.**

The Head of State, acting on the advice of the Minister acting on the advice and recommendation of the Board, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are permitted or required to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act, and in particular for prescribing fees and for prescribing penalties of fines not exceeding K10,000.00 and default penalties of fines not exceeding K1,000.00 for the infringements of the regulations.

**53. PROSECUTIONS.**

(1) The Trust may prosecute any offence against This Act.

(2) Any action commenced under this Act is to be heard by the National Court of Papua New Guinea.

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

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

**54. CONFIDENTIALITY.**

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

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

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

Office of Legislative Counsel, PNG