

No. 7 of 2007.

***Motu Koita Assembly Act 2007.***

Certified on: 3/7/2007.





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AN ACT

entitled

***Motu Koita Assembly Act 2007,***

Being an Act to provide for a government for the Motu Koita people of the National Capital District pursuant to Section 4 of the *Constitution* and for related purpose.

MADE by the National Parliament.

**PART 1. – PRELIMINARY.**

***Division 1. – Compliance with Constitutional Requirements.***

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

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

- (a) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (b) the right to freedom of employment conferred by Section 48; and
- (c) the right to privacy conferred by Section 49; and
- (d) the right to stand and vote for public office conferred by Section 50; and
- (e) the right to freedom of information conferred by Section 51; and
- (f) the right to freedom of movement conferred by Section 52 of the *Constitution* is a law that is made for the purpose of giving effect to the national interest in public safety and public welfare.

(2) For the purposes of Section 53 of the (protection from unjust deprivation of property) *Constitution*, the purpose of enabling the Motu Koita people of the National Capital District to participate actively and meaningfully in the development of the National Capital District is a public purpose.

(3) This Act relates to a matter of national interest.

**2. INTERPRETATION.**

In this Act unless the contrary intention appears –

“**Assembly**” means the Motu Koita Assembly established by Section 10;

“**biological diversity**” means the natural variability of live organisms of any source, including the terrestrial, marine ecosystems and other aquatic ecosystems and the

ecological complexes of which they form part, comprises the diversity within species, among the species and of the ecosystems;

**“Committee”** means a committee established under Section 14;

**“custom”** means the customs and usages of indigenous inhabitants of the country existing in relation to land or the use of land at the time when and the place in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial;

**“customary land”** means land that is owned or possessed by an automatic citizen or community of a automatic citizens by virtue of rights of a proprietary or possessory kind that belong to that citizen or community and arise from and are regulated by custom;

**“customary rights”** means rights of a proprietary or possessory kind in relation to land that arise from and are regulated by custom;

**“developer”** means a person who, in accordance with an agreement with the State or with the consent of the State, undertakes the development of a natural resource;

**“ecological integrity”** means the ecosystems’ capacity to continue its ongoing change and development with limited restraint by human interferences and the abilities to regenerate themselves under normal stresses especially nonanthropogenic stress;

**“environment”** means the ecosystems and their constituent parts, and includes –

- (a) all natural and physical resources; and
- (b) human beings; and
- (c) cultural values which are embedded in customary knowledge and practices; and
- (d) social, economic and aesthetic values;

**“interest groups”** includes –

- (a) youth; and
- (b) churches; and
- (c) professional groups; and
- (d) business community; and
- (e) non-government organizations;

**“large scale industrial development”** means an economic activity that has major socio-economic impacts and is valued at K500,000.00 or more;

**“licence”** means a licence issued under Section 39;

**“local communities”** means a village, settlement or hamlets where Papua New Guineans usually reside;

**“Manager”** means the Manager of the Assembly appointed under Section 31;

**“Member”** means a member of the Assembly referred to in Section 11;

**“Motu Koita”** means the peoples known as Motu and Koita who are the customary land owners who are resident within the National Capital District;



**“Motu Koita villages and areas”** means the customary Motu Koita villages and all customarily owned and unalienated land and sea within the National Capital District;

**“Motu Koita areas”** means the areas referred to under Section 2 of the *National Capital District Commission Act 2001*;

**“National Capital District”** means the District established by Section 4 of the *Constitution*, the boundaries of which are described in the *Organic Law on the boundaries of the National Capital District*;

**“natural resource”** includes minerals, petroleum, gas, marine products, water, timber (including forest products), fauna, flora and any other product determined by law to be a natural resource;

**“socio-economic impact”** means the direct or indirect effects to the economy, social or cultural practices, livelihoods, customary knowledge systems, or indigenous technologies as a result of activities or dealings involving large scale industrial activities and natural resource development projects;

**“sustainable development”** under the Act means the wise use and management of the environment and natural resources for the collective benefit of the people and protecting and strengthening the capacity of the natural ecosystems to meet the needs of the future generations;

**“this Act”** includes the regulations;

**“the principles of sustainable development”** are –

- (a) decision-making processes must effectively integrate both long term and short-term economic, environmental, social and equitable considerations; and
- (b) decision-making processes must be transparent and enable the people to have access to vital public information to ensue their full and active participation in development; and
- (c) the protection and maintenance of ecological integrity should be a fundamental consideration in decision-making; and
- (d) the precautionary approach to human health, natural resources and ecosystems is a vital element of decision-making processes and if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation; and
- (e) the principle of inter-generational equity – that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations; and
- (f) the traditional knowledge and values which support ecological integrity and the rights of local communities must be strengthened and improved.

### 3. APPLICATION OF ACT.

(1) This act applies to –

- (a) the State; and
- (b) all natural persons, whether resident in the country or not; and
- (c) all corporations, whether incorporated or carrying on business in the country or not.

(2) The provisions of this Act shall apply to all matters relating to the people, villages, communities, customary land, resources and government of the Motu Koita people of the National Capital District.

***Division 2. – Objectives and Principles.***

**4. OBJECTIVES OF THE ACT.**

The objectives of this Act are –

- (a) to protect and strengthen the identity of the Motu Koita people as the original landowners of the National Capital District; and
- (b) to promote equal opportunity and popular participation in government by the Motu Koita people; and
- (c) to provide for the Motu Koita people especially the basic human needs for water, health, education, transportation, communication, accommodation and social order through economic self-reliance; and
- (d) to protect the customary land and natural resources of the Motu Koita people.

**5. PRINCIPLES RELEVANT TO THE OBJECTIVES OF THE ACT.**

To achieve the objectives of the Act, all persons exercising functions, powers, and duties under the Act shall recognize and take into account the following principles –

- (a) the strengthening and enhancement of the social, economic and cultural wellbeing of the Motu Koita people and their future generations; and
- (b) the maintenance and strengthening of traditional knowledge and practices of the Motu Koita people that promote sustainable development and the capacity of Motu Koita people and Motu Koita communities; and
- (c) the sustainable use of natural resources; and
- (d) the ecological integrity of ecosystems; and
- (e) the equitable sharing of benefits to be derived from the use of natural resources.

**PART 2. – SYSTEM OF GOVERNMENT.**

***Division 1. – Establishment of Government.***

**6. SYSTEM OF LOCAL GOVERNMENT.**

(1) A system of Local Government is hereby established for the Motu Koita people of the National Capital District.

(2) Subject to the Constitution, the system of Local Government established by Subsection (1), shall be implemented in accordance with this Act.

***Division 2. – Legal Status.***

**7. LEGAL CAPACITY.**

The Motu Koita Assembly –

- (a) may acquire, hold and dispose of property of any kind; and
- (b) may sue and be sued; and
- (c) have a common seal; and
- (d) has a perpetual succession; and
- (e) may enter into contracts, subject to the prior approval of the Minister; and
- (f) may conduct business enterprises.

**8. SERVICE OF PROCESS.**

Any notice, summons, writ or other process required to be served on the Motu Koita Assembly may be served on an officer designated under this Act for that purpose.

**9. RECOGNITION OF MOTU KOITA ASSEMBLY LAWS, JUDICIAL NOTICE, ETC.**

Full faith and credit shall be given throughout Papua New Guinea to the laws, the public acts, records and proceedings of the Motu Koita Assembly.

**PART 3. – STRUCTURE OF ASSEMBLY.*****Division 1. – The Motu Koita Assembly.*****10. ESTABLISHMENT OF THE MOTU KOITA ASSEMBLY.**

(1) The Motu Koita Assembly is hereby established.

(2) The office of the Assembly is declared a public office pursuant to Section 26(3) of the *Constitution* (Application of Division 2), and in relation to which Division III.2 (Leadership Code) of the *Constitution* applies.

**11. MEMBERS OF THE ASSEMBLY.**

(1) The Assembly shall consist of –

- (a) the Chairperson elected by the Motu Koita people of the National Capital District in an election conducted by the Electoral Commission; and
- (b) fourteen members elected by the Motu Koita people of the National Capital District in an election conducted by the Electoral Commission; and
- (c) two women members representing the East and West areas of Motu Koita of the National Capital District elected by the Motu Koita women in an election conducted by the Electoral Commission; and
- (d) a person representing the youths; and
- (e) a nominated member representing the business sector; and
- (f) a nominated member representing the churches.

(2) Members of the Assembly elected under Subsection (1)(a), (b) and (c) hold office for a period commencing on and from the date of their election up to and including the date fixed for the return of writs for the next general election held after their election.

(3) The members of the Assembly –

- (a) referred to in Subsection (1)(a), (b) and (c) shall hold office for a period of five years; and
- (b) referred to in Subsection (1)(d), (e) and (f) shall be appointed by the Assembly for such periods as the Assembly determines; and
- (c) are eligible for re-election or reappointment.

(4) The number of members elected under Subsection (1)(b) is determined by the number of constituencies or wards declared within the boundaries of the area under the jurisdiction of the Assembly.

**12. ELIGIBILITY OF MEMBERSHIP OF THE ASSEMBLY.**

(1) A candidate for election under Section 11(1)(a), (b) and (c) must –

- (a) be a person whose mother or father is a Motu Koitabuan; and
- (b) have his traditional home and have resided within the Motu Koita area for not less than 2 years.

(2) A person is not eligible to contest an election if he or she is –

- (a) an undischarged bankrupt or insolvent; or
- (b) insane; or
- (c) medically certified alcoholic; or
- (d) convicted of an indictable offence; or

- (e) dismissed from office in accordance with Division III.2 (Leadership Code) of the *Constitution* for misconduct in office.

### **13. REMUNERATION AND ALLOWANCES.**

The Chairperson, Deputy Chairperson and members shall be paid such fees and allowances and receive such benefits as are determined by the Salaries and Remuneration Commission.

### **14. ASSEMBLY COMMITTEES.**

(1) The Assembly may, in accordance with this Act –

- (a) establish such number of committees (including permanent committees) as the Assembly considers necessary to carry out its functions; and
- (b) determine all matters relating to committees.

(2) The committees of the Assembly shall consist of members of the Assembly and such other persons representing interest groups as appointed by the Assembly.

### **15. VACATION OF OFFICE.**

(1) A member of the Assembly may resign his office by writing signed by him and delivered to the Chairperson.

(2) If a member of the Assembly other than the Chairperson –

- (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 written consent of the Chairperson, for three consecutive meetings of the Assembly; or
- (d) fails to comply with Section 18; 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 for their benefit; or
- (f) is convicted of an offence punishable under a law for a term of imprisonment of one year or longer or by death, and, as a result of that conviction, is sentenced to imprisonment or death; or
- (g) ceases to be ordinarily resident in the country, the Minister responsible,

for provincial government and local-level government matters, acting on the advice of the Assembly, shall terminate his appointment.

(3) The Assembly, acting on advice, may, at any time, by written notice, advise a member that the Assembly 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 Assembly which shall consider the reply and, where appropriate, in principle terminate the appointment.

(5) When the member does not reply in accordance with Subsection (4), his appointment is terminated.

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

The exercise or performance of the powers and functions of the Assembly is not invalidated by reason only of a vacancy in the membership of the Assembly.

**17. LEAVE OF ABSENCE OF MEMBERS.**

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

(2) The Assembly may by resolution grant leave of absence to the Chairperson of the Assembly on such terms and conditions as the Assembly determines.

**18. DISCLOSURE OF INTEREST.**

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

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the meeting of the Assembly or committee and the member –

- (a) shall not take part, after disclosure, in any deliberation or decision of the Assembly or committee in relation to the matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Assembly or committee for any such deliberation or decision.

**19. PROTECTION FROM PERSONAL LIABILITY.**

A member of the Assembly, or an officer of the Assembly is not personally liable for any act or default of himself done or omitted to be done in good faith.

**20. ASSEMBLY'S QUORUM AND PROCEDURES.**

(1) The Assembly shall meet as often as practicable and at such times and places as the Chairperson directs, but in any event not less frequently than three times in very year.

(2) At the meeting of the Assembly –

- (a) half of the total number of members for the time being constitute a quorum; and
- (b) the Chairperson, or in his absence the Deputy Chairperson, shall preside, and if both Chairperson and Deputy Chairperson are absent, the members present shall appoint, from their own number, a Chairperson for that meeting; and
- (c) matters arising shall be decided by a majority of the votes of the members present and voting; and
- (d) the Chairperson presiding has a deliberative, and in the event of an equality of votes on any matter, also a casting vote.

(3) Subject to this Act, the procedures of the meetings of the Assembly are as determined by the Assembly.

***Division 2. – The Chairperson of the Assembly.*****21. CUSTODY AND AFFIXING OF COMMON SEAL.**

The seal of the Assembly shall –

- (a) be kept in the custody of the Chairperson or the Deputy Chairperson, or such other person the Assembly may approved; and

- (b) be fixed to all instruments made as a result of a resolution of the Assembly in the presence of the Chairperson or Deputy Chairperson or such other person approved by the Assembly; and
- (c) be authenticated by the signature of the Chairperson, or the Deputy Chairperson, or by such other person approved by the Assembly.

## 22. CHAIRPERSON OF ASSEMBLY.

(1) There shall be a Chairperson for the Assembly.

(2) The Chairperson shall, *ex officio*, be one of the members to represent the Assembly in the National Capital District Commission.

(3) If the Chairperson is –

- (a) on leave of absence; or
- (b) absent from the National Capital District; or
- (c) dead; or
- (d) out of speedy and effective communication; or
- (e) otherwise unable to perform, or is not readily available to perform the duties of his office, the Deputy Chairperson shall perform the functions,

and responsibilities of the Chairperson as Chairperson of the Assembly.

(4) Where the Chairperson dies during his term, subject to Subsection (5) a by-election shall be conducted in accordance with Section 11(1)(a).

(5) Where the Chairperson dies six months prior to an election, a by-election shall not be held to fill the vacancy.

## 23. POLITICAL AND EXECUTIVE RESPONSIBILITIES OF THE CHAIRPERSON.

The Chairperson, or in his absence the Deputy Chairperson, shall –

- (a) be politically responsible to the Assembly for the overall development and good government of the Motu Koita people; and
- (b) be constitutionally responsible to the Minister responsible for provincial government and local-level government matters.

### *Division 3. – Functions and Powers of the Assembly.*

## 24. FUNCTIONS OF THE ASSEMBLY.

(1) Subject to this Act, the functions of the Assembly are –

- (a) to promote and strengthen the rights and interests of the Motu Koita people of the National Capital District; and
- (b) to protect the customary lands and resources of the Motu Koita people of the National Capital District; and
- (c) to control, manage and administer Motu Koita villages and areas to ensure the welfare of persons living in the villages and areas; and
- (d) to ensure adequate level of assistance is given towards the successful operation of the business arm of Motu Koita people of the National Capital District; and
- (e) to carry out effect the objectives of this Act.

(2) Subject to Subsection (3) the Assembly may delegate to a committee a function of the Assembly.

(3) A delegation under Subsection (2) –

(a) shall be in writing; and

(b) may be subject to such conditions or restrictions as specified in the instrument of delegation; and

(c) is revocable by the Assembly in writing.

(4) Subsection (3) shall not affect or prevent the performance of a function or the exercise of a power by the Assembly.

## **25. POWERS OF THE ASSEMBLY.**

(1) Subject to this Act and to any other law, the Assembly has, for the purpose of fulfilling its functions, the power –

(a) to make laws as provided in Part 5 ; and

(b) to acquire, hold, dispose of, mortgage or pledge property, land and buildings; and

(c) to develop or improve land; and

(d) to construct building; and

(e) to invest money; and

(f) to provide, or co-operate with a Department or other body in providing a public or social service; and

(g) to determine the duties and functions of any person employed by the Assembly; and

(h) to do all such other matters and things that seem to it necessary for carrying out and performing its functions and powers.

(2) The Assembly has such other powers as are conferred by any other law and shall do all things necessary to be done in connection with the performance of its functions and powers under the Act.

## **26. REPORTS.**

(1) The Assembly shall, by 31 March each year, furnish to the Minister responsible for provincial government and local-level government matters, a report on the progress and performance of the Assembly in relation to its functions for the year ending 31 December previously.

(2) The annual report shall include –

(a) the extent to which the Assembly has met the objectives of the Act; and

(b) an assessment of the extent to which the Act has contributed to the general welfare of the Motu Koita people; and

(c) the strategies the Assembly has adopted or intends to adopt to achieve the objectives of the Act in the succeeding year; and

(d) all financial statements; and

(e) any other matters that the Assembly may decide to incorporate in the report.

(3) As soon as practicable after he has received a report under Subsection (1), the Minister shall forward the report to the Speaker for presentation to the National Parliament.



**PART 4. – ADMINISTRATION OF ASSEMBLY.**

***Division 1. – Staff Generally.***

**27. STAFF.**

(1) The staff of the Assembly shall consist of –

- (a) a Assembly Manager appointed in accordance with Section 31; and
- (b) such other officers appointed by the Assembly in accordance with Section 29, as it considers necessary for the purposes of performing its functions.

(2) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the offices shall hold office on such terms and conditions as determined by the Assembly.

(3) The officers of the Assembly are responsible to the Manager for the day to day operations of the Assembly.

(4) The persons who, immediately before the date of coming into operation of this Act, held the positions of manager and officers of the Assembly shall continue to hold such offices until such time that they are terminated by the Assembly.

(5) In the absence of a determination under Subsection (2), the terms and conditions of employment which applied, immediately before the coming into operation of this Act, shall continue to apply to the Manager and officers of the Assembly.

**28. TEMPORARY AND CASUAL EMPLOYEES.**

(1) The Manager may, with the approval of the Assembly, appoint such temporary and casual employees as are necessary for the purposes of the Authority.

(2) The employees appointed under Subsection (1) shall be employed on such terms and conditions as the Assembly determines.

**29. APPOINTMENT OF OFFICERS.**

(1) The Assembly may appoint to be officers of the Assembly such persons it considers fit and necessary for the purposes of the Assembly.

(2) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the terms and conditions of appointment of officers of the Assembly are as determined by the Assembly in accordance with this Act.

**30. CONSULTANTS.**

The Assembly may, from time to time –

- (a) within the limit of funds available for the purpose; and
- (b) on such terms and conditions as are fixed by the Manager on the advice of the Assembly, appoint such consultants as are necessary for the purpose of the Assembly.

***Division 2. – Assembly Manager.***

**31. MANAGER.**

(1) An Assembly shall appoint a suitable person to be the Assembly Manager for such period as the Assembly determines.

(2) The Manager is –

- (a) the Chief Executive Officer of the Assembly; and
- (b) responsible to the Assembly for the efficient carrying out of the functions and responsibilities of the Assembly.

(3) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the terms and conditions of appointment of the Manager are as determined by the Assembly.

### **32. FUNCTIONS OF THE MANAGER.**

(1) The Manager shall –

- (a) manage the Assembly in accordance with the policy and direction of the Assembly; and
- (b) advise the Assembly on any matter concerning the Assembly referred to him by the Assembly; and
- (c) receive any notice, summons, writ or other process under Section 8; and
- (d) supervise and manage the officers and other employees of the Assembly in the performance of their duties; and
- (e) carry out and perform the duties required of him under this Act and under his contract of employment.

(2) The Manager has such other duties as the Assembly shall from time to time determine.

(3) The Manager shall be entitled to attend all meetings of the Assembly –

- (a) but is not a member of the Assembly as such; and
- (b) does not have a right to vote; and
- (c) shall not be counted for the purpose of a quorum.

### **33. TERMINATION OF APPOINTMENT OF THE MANAGER.**

(1) If the Manager –

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office by writing under his hand to the Chairman of the Assembly; or
- (c) occupies or holds any other paid office or employment or engages in the practice of any profession or business without the written consent of the Chairperson of the Assembly; or
- (d) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his debtors or makes an assignment or his remuneration for their benefit; or
- (e) is convicted of an offence punishable under a law by death or by imprisonment for one year or longer and, as a result of the conviction, is sentenced to death or imprisonment, the Assembly shall terminate the appointment.

(2) The Chairperson may, at any time, by written notice, and by resolution of the Assembly, advise the Manager that he intends to terminate his appointment as Manager on the grounds of inability, inefficiency, incapacity or misbehaviour.

(3) Within 14 days of the receipt of a notice under Subsection (2), the Manager may reply in writing to the Chairperson of the Assembly, who shall consider the reply and, where appropriate, after considering a recommendation of the Assembly, terminate the appointment.

(4) Where the Manager does not, within 14 days of the receipt of a notice under Subsection (3), reply in writing to the Chairperson of the Assembly, his appointment is terminated.

(5) Where the appointment of the Manager is terminated under this section, the Chairperson shall, declare the office vacant.

**34. PUBLIC SERVICE RIGHTS.**

Where –

- (a) an officer of the Public Service is appointed as Manager; and
- (b) an officer of the Assembly was, immediately before his appointment, an officer of the Public Service, his service as Manager or an officer of the Assembly, as the case may be, shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of –
  - (i) leave of absence on grounds of illness; and
  - (ii) furlough, or pay in lieu of furlough (including pay to dependents on the death of the officer).

**PART 5. – LAW-MAKING POWERS OF ASSEMBLY.*****Division 1. – General Division of Powers.*****35. PRINCIPLES OF DIVISION OF LAW-MAKING POWERS.**

(1) The division of law-making powers between the National Government, the National Capital District Commission and the Assembly shall be based on the following principles –

- (a) the National Government, the National Capital District Commission and the Assembly shall respectively have specific powers; and
- (b) the powers that are not so specified shall be assumed to remain with the National Government; and
- (c) where for any reason, a level of government cannot exercise any of its powers efficiently then such powers may be delegated to either of the other levels of governments to exercise on behalf of the first government; and
- (d) the Assembly's powers are subject to the national law but only to the extent that the national interest so requires, otherwise they shall have relative autonomy to operate; and
- (e) the powers of the Assembly may be subject to the powers of the National Capital District Commission but only to the extent that the National Capital District interest requires them to be made subject to the National Capital District laws, otherwise they shall have relative autonomy to operate.

(2) A law made by the Assembly has effect only in and in relation to the Motu Koita villages and specific areas of the National Capital District.

(3) The general principles in this section are non-justiciable but may be used in the interpretation and implementation of this Act.

***Division 2. – Law-Making Powers.*****36. LEGISLATIVE POWERS OF THE ASSEMBLY.**

(1) Subject to the Constitution, the Assembly may in so far as Motu Koita areas are concerned, make laws on the following matters –

- (a) village development committees; and
- (b) village markets; and
- (c) village cemeteries; and
- (d) community sport, recreation, cultural and industrial shows and centres; and
- (e) land and land development; and
- (f) head tax; and
- (g) village building standards; and
- (h) human settlements; and
- (i) sewage disposal; and
- (j) garbage collection and disposal; and
- (k) littering; and
- (l) customary marriages and adoption; and
- (m) registration of births, deaths, marriage; and
- (n) control on consumption and use of alcohol, betel nuts, and betel nut related products or any other marketable items; and
- (o) general licensing; and

- (p) gambling, lotteries and other games of chance; and
- (q) domestic animals, flora and fauna; and
- (r) local environment; and
- (s) local tourist facilities and services; and
- (t) bride and groom wealth; and
- (u) protection of customary sacred sites; and
- (v) customary and customary copyright; and
- (w) cottage industries; and
- (x) the imposition of fines for breaches of any of its laws; and
- (y) licensing of mobile traders; and
- (z) small crafts and boats; and
- (aa) bicycles and tricycles; and
- (ab) customary fishing grounds and reefs; and
- (ac) licensing of Satellite TV services.

(2) A law made under Subsection (1) shall have effect so far as it is not inconsistent with an Act of the Parliament made –

- (a) before the coming into operation of this Act; or
- (b) in accordance with Section 35.

(3) For the purpose of Subsection (2), a question –

- (a) whether or not a law made under Subsection (1) is a law with respect to a matter specified in that Subsection; or
- (b) whether or not a law made under Subsection (1) is inconsistent with an Act of the Parliament, is non-justiciable except at the insistence of the National Government.

### **37. LEGISLATION TO BE SUBMITTED TO THE MINISTER.**

(1) Subject to Subsection (3) a law made under this Part by the Assembly shall not come into operation until the written consent of the Minister responsible for provincial government and local-level government matters, to the text of the law has been given.

(2) The Assembly shall serve a copy of the law, physically, on the Minister responsible for provincial government and local-level government matters.

(3) Where the Minister responsible for provincial and local-level government matters has not made a decision as to whether or not to approve the law within 30 days on and from the date on which the law was served on him the law shall be deemed to have been approved by him.

**PART 6. – FISCAL REGIME.*****Division 1. – Motu Koita Assembly Finances.*****38. OUTLINE OF MOTU KOITA ASSEMBLY FINANCES.**

The finances of the Assembly shall consist of –

- (a) receipt from taxation and licensing fees imposed by Assembly laws; and
- (b) grants from the National Government based on an agreed percentage of receipts from Airport Tax, Harbour fees and State Land Lease rentals; and
- (c) grants from the National Governments in accordance with Section 42; and
- (d) grants from the National Capital District Commission based on 10 percentage of the Goods and Services Tax payable by the Internal Revenue Commission to the National Capital District Commission in accordance with Section 33 of the *National Capital District Commission Act 2001*; and
- (e) the proceeds of court fees, fines and penalties as provided for by Section 39; and
- (f) the proceeds of certain investments in accordance with Section 44; and
- (g) the proceeds of investments by it (including interest on bank deposits) and income from commercial enterprises conducted by it; and
- (h) such other moneys as are lawfully available to it under this Act or any other law.

**39. LEGISLATION IMPOSING TAXATION.**

(1) The Assembly has power to impose all or any of the following fees and taxes –

- (a) community services taxes, fees and charges; and
- (b) taxes on public entertainments for which admission is charged and on places kept for the purposes of such entertainment; and
- (c) fees for licences for general trading (other than banks within the meaning of the *Banks and Financial Institutions Act 2000*); and
- (d) domestic animal licence fees; and
- (e) personal head tax; and
- (f) fees for licenses to carry on or operate gambling, lotteries and games of chance; and
- (g) fees for the licensing of places where intoxication liquor is sold; and
- (h) taxes on land.

(2) The Assembly may impose such other fees or taxes by virtue of a delegation from the National Government or the National Capital District Commission.

**40. COURT FEES AND FINES, ETC.**

(1) Where an Assembly law provides for the imposition of fines or penalties, or of forfeitures for any offence against any Assembly law, the amount of fines or penalties shall be paid, or the forfeitures shall be made, as the case may be, to the Assembly.

(2) Where an Assembly law provides for fees to be payable in any court, the amount of the fee shall be paid to the Assembly.

**41. FEES AND CHARGES.**

(1) The Assembly may from time to time fix the charges –

- (a) on a scale of charges for exercising or performing any function, power or duty; and

- (b) based on the time involved in exercising or performing any function, power or duty; and
- (c) specify the persons liable to pay the charges.

(2) Before any charges fixed by the Assembly pursuant to Subsection (1) come into force, the Assembly shall publicly notify the charges it has fixed –

- (a) in a national or local newspaper that is distributed regularly throughout the country; or
- (b) in such other manner as the Assembly deems appropriate.

***Division 2. – Financial Grants and Assistance.***

**42. TOWN AND URBAN SERVICE GRANTS.**

(1) For each fiscal year, the National Government shall, out of moneys lawfully available for the purpose, make conditional grants to the Assembly consisting of –

- (a) town and urban services grants; and
- (b) other support grants.

(2) The minimum amount of the town and urban services grants shall be calculated in the same manner as the calculations made for provincial governments and local-level governments under Section 94 and Schedule 4 to the *Organic Law on Provincial Governments and Local-level Governments*.

(3) The grants to which this section refers shall be paid directly to the Assembly.

***Division 3. – Borrowing and Investments.***

**43. BORROWING.**

The Assembly may with the prior consent of the Minister responsible for financial matters, borrow money for any of its functions under this Act.

**44. INVESTMENT.**

The Assembly may invest any moneys standing to the credit of the account referred to in Section 45 –

- (a) in any securities of, or guaranteed by the State; or
- (b) on deposit in an approved bank within the meaning provided by the *Public Finances (Management) Act 1995*; or
- (c) in the securities of any money market toward which the Bank of Papua New Guinea acts as lender of last resort; or
- (d) in any other securities authorized by the Minister responsible for financial matters.

**45. BANK ACCOUNTS.**

(1) The Assembly shall, open and maintain such bank accounts as are necessary for the exercise and performance of its functions and powers, and shall pay into these accounts –

- (a) all moneys received from the National Capital District Commission and from the State for the purposes of this Act; and
- (b) all moneys appropriated by the Act for the purpose of carrying out or giving effect to this Act; and
- (c) rates, taxes, fees and charges imposed, levied or made by the Assembly; and

(d) all other moneys received by the Assembly in or for the performance of its functions and powers.

(2) Out of the moneys standing to the credit of the accounts referred to in Subsection (1), the Assembly shall pay –

(a) all money payable by the Assembly in repayment of advances under this Act and as interest on such advances; and

(b) the costs, charges and expenses incurred by the Assembly in the performances of its functions; and

(c) the remuneration of staff of the Assembly; and

(d) any other payment that the Assembly is authorized or required to make under this Act or any other law.

#### ***Division 4. – Budget.***

#### **46. ESTIMATES.**

(1) The Assembly shall before 1 October each year, submit to the Minister responsible for financial matters, estimates of its receipts and expenditure of the next financial year.

(2) Where the Assembly fails to submit estimates in accordance with Subsection (1), the Minister may, by written notice require it to submit its estimates.

(3) Where the Minister is satisfied that the proposals contained in any estimates, supplementary estimates or revised estimates –

(a) are reasonable; or

(b) are within the authorized powers of the Assembly under this Act; and

(c) are likely to be capable of being met from the finances available, the Minister shall approve the budget.

(4) Where the Minister is not satisfied as to the matters referred to in Subsection (3), he may reject the budget in whole or in part, and shall immediately advise the Assembly of his reasons for the refusal.

(5) Where the Minister has withheld approval of the budget, the Assembly shall immediately furnish a revised money plan for approval by the Minister.

#### ***Division 5. – Audit.***

#### **47. KEEPING OF ACCOUNTS.**

The Assembly shall –

(a) keep proper accounts and records of its finances; and

(b) do all things necessary to ensure that all payments out of the respective funds are correctly made and properly authorized.

#### **48. AUDITS.**

(1) The Auditor-General shall inspect and audit the accounts and financial records of the Assembly.

(2) The Auditor-General may, appoint a registered company auditor to undertake the inspection or audit under this section on his behalf, on terms and conditions determined by the Auditor-General.



(3) A person carrying out an inspection or audit under this section –

- (a) is entitled, at all reasonable times, to full and free access to all accounts, records, documents and papers of the Assembly relating directly or indirectly to the receipt or payment of money by it, or to the acquisition, receipt, custody or disposal of assets by it; and
- (b) may make copies of, or take extracts from, any such accounts, records, documents or papers; and
- (c) may require any person to furnish him with such information in his possession or to which he has access to for the purpose of carrying out his functions under this section.

(4) A person who contravenes Subsection (3)(c) is guilty of an offence.

Penalty: Where the person convicted of an offence is –

- (a) a corporation – a fine not exceeding K5,000.00; and
- (b) an individual – a fine not exceeding K2,000.00.

(5) Where an audit inspection has been carried out under this section the Auditor-General shall send to the Minister as soon as is practicable a report on the audit and inspection and the Minister shall table such report in the National Parliament.

**PART 7. – ACCESS TO CUSTOMARY LAND AND NATURAL RESOURCES.****49. ACCESS TO NATURAL RESOURCES.**

(1) A developer who intends –

- (a) to develop a natural resource located; or
- (b) establish a large scale industrial development, on customary Motu Koita land shall obtain an access licence for such purpose from the Assembly.

(2) The application for an access licence shall be submitted to the Assembly for consideration.

(3) The applicant shall set out in full the manner in which the rights of Motu Koita people and their land and resources will be respected and protected.

(4) In considering an application under Subsection (2), the Assembly shall give paramount consideration to the protection and conservation of the cultural values and customary knowledge and the ecological integrity of the environment of the Motu Koita people.

(5) Where the Assembly is satisfied that the application meets the requirements stated by the Assembly, it shall issue the access licence.

(6) The Assembly shall fix access fees –

- (a) to be paid by an applicant under this Part; and
- (b) remit access fees to the relevant Motu Koita village to be shared equally by the customary land owners.

**50. PRIOR INFORMED CONSENT.**

(1) Where Motu Koita villages will be directly affected by a natural resource development project or large scale industrial development, the prior informed consent of the Motu Koita villages and the relevant customary land owners must be obtained by the developer and Assembly before a licence is granted under any other law.

(2) Subject to Subsection (4), the Assembly may formulate regulations specifying the manner in which the consent of Motu Koita villages and customary land owners would be obtained for the purposes of this Act.

(3) The process by which the prior informed consent of the Motu Koita villages and customary land owners is obtained must be simple, transparent and allow the greatest opportunity for participation by the Motu Koita villages particularly women and the youths.

(4) The absence of any appropriate guidelines under Subsection (3), does not absolve the Assembly and the developer of their duty to seek and obtain the prior informed consent of the Motu Koita villages and customary land owners before the issuance of a licence under an Act of the Parliament.

**51. REGISTER OF CONSULTANTS.**

(1) In order to assist Motu Koita villages and customary land owners participate meaningfully in the negotiations, the Assembly shall keep a register of consultants who may be called upon to provide social, financial, legal or environmental advice to the Motu Koita people and customary land owners.

(2) The costs of the consultants shall be covered by the developer and the Assembly.

(3) The appointment and the terms of references of consultants shall be by mutual agreement between the Assembly, the developer and the relevant Motu Koita villages and customary land owners.

**52. BENEFIT SHARING.**

(1) The Assembly shall, before issuing an access licence for an activity relating to this Part, ensure that a valid benefit sharing arrangement in the form of a contract is executed between the relevant Motu Koita villages, the customary land owners, the relevant national government agencies, the National Capital District Commission, the developer and the Assembly.

(2) Where there are disputes as to ownership of land or other related disputes, the disputing parties must in principle give their consent for the development project to proceed, and in the event that the dispute is procrastinated, the Assembly shall manage the benefits of the villages or customary land owners until such time as those disputes have been resolved.

**PART 8. – ENFORCEMENT.****53. GENERAL PENALTY.**

A person who contravenes this Act or a law made by the Assembly, is guilty of an offence.

Penalty: Where the person convicted of an offence is –

- (a) corporation – a fine not exceeding K10,000.00; and
- (b) an individual – a fine not exceeding K2,500.00 or imprisonment for a term not exceeding two years or both.

Default penalty: A fine not exceeding K200.00.

**54. INJUNCTIONS.**

(1) The Assembly or any other person, may apply to the National Court to obtain an injunction restraining a person who has engaged, is engaging, or is about to engage in any conduct that is or would be an offence against this Act.

(2) Where –

- (a) a person has refused or failed, is refusing or failing, or is about to refuse or fail, to do a thing; and
- (b) the refusal or failure is, or would be, an offence against this Act, the Court may, on the application of the Assembly or any other person, grant an injunction requiring the person to do the thing.

(3) The Court shall grant an injunction –

- (a) whether or not it appears to the Court that the person intends to engage, or to continue to engage, in a conduct of that kind; and
- (b) whether or not the person has previously engaged in a conduct of that kind.

(4) The Court may discharge or vary an injunction granted under this section.

(5) The Court may grant an interim injunction pending a determination of an application under Subsection (1).

(6) The powers granted by this section are in addition to, and not in derogation of, any other powers of the Court.

**55. FORFEITURE.**

(1) Where a court convicts a person of an offence against this Act or a law made by the Assembly, the court may order forfeiture to the Assembly of any substance or thing used or otherwise involved in the commission of the offence.

(2) A substance or thing ordered by a court to be forfeiture under this section becomes the property of the Assembly and may be sold or otherwise dealt with in accordance with the directions of the Minister.

**PART 9. – SUSPENSION OF ASSEMBLY.**

**56. COMMITTEE OF INQUIRY.**

(1) The Minister for provincial and local government affairs may if he forms the opinion that –

- (a) there is corruption in the administration of the affairs of the Assembly; or
- (b) there is gross mismanagement of finances of the Assembly; or
- (c) there is breakdown in the administration, persistent, deliberate frustration and failure to comply with lawful directions of the National Government;
- (d) the Assembly persistently exceeded and disobeyed relevant laws and powers, appoint a committee of inquiry of not more than three (3) persons to investigate and report to him on the matter, and the Minister should then table the report to the National Executive Council, with the reasons for appointing such a committee of inquiry.

(2) The National Executive Council, upon receipt of the report of the commission of inquiry tabled by the Minister, deliberate on the matter and advise the Head of State to suspend all or any of the functions and powers of the Assembly.

**57. SUSPENSION.**

(1) Subject to Section 59, the Head of State acting on advice, may by order in the National Gazette, suspend all or any function or power of the Assembly for a stated period.

(2) The National Executive Council, in advising the Head of State, is not bound by the terms of reference of, or recommendations contained in the report of the committee of inquiry.

**58. EFFECT OF SUSPENSION.**

(1) The suspension order operates to deprive the Assembly of all such functions and powers as are specified for the duration of the term of the suspension.

(2) Where the Assembly has been suspended, the Head of State, acting on advice, order, or in a subsequent instrument, appoint a person to be the administrator to the Assembly, and that such an appointee may exercise on behalf of the Assembly, the suspended functions and powers, as specified by the Head of State, on advice.

**59. LIFTING OF SUSPENSION.**

(1) The Assembly shall be suspended for a period not longer than six (6) months and that an extension of the suspension may not exceed three (3) months.

(2) Where the National Executive Council is satisfied that the matters leading to the suspension of the Assembly have been resolved during the suspension period, it shall advise the Head of State to lift the suspension of the Assembly.

**PART 10. – MISCELLANEOUS.****60. CONFIDENTIALITY.**

(1) Information disclosed under this Act to the Minister, to a member of the Assembly, or a committee, or an officer, or an expert, or to any employee of the Assembly shall not be disclosed to any person who is not a member of the Assembly or a committee or an employee of the Assembly without the prior written approval of the person who provided that information, except –

- (a) to the extent that disclosure is authorized or required under this Act or any other law; and
- (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 to enable the Assembly to publish statistical information concerning the subject matter of the functions of the Assembly; or
- (d) to the extent necessary to enable the Assembly or the Minister to give advice to the National Executive Council, Departments, or the Central Bank.

(2) A member of the Assembly, or a committee, or an officer, or an expert, or an employee of the Assembly who uses, for the purpose of his personal gain, any information disclosed under this Act that comes to his knowledge in the course of, or by reason of, his membership of the Assembly, or a committee, or his employment as an expert or an employee of the Assembly, is guilty of an offence.

Penalty: A fine not exceeding K20,000.00 or imprisonment for a term not exceeding two years, or both.

**61. PROTECTION OF WHISTLEBLOWER.**

(1) An employee or an agent of the Assembly who discloses information or material leading to the prosecution of an officer or member of the Assembly under this Act shall not be liable for any act or default of himself done or omitted to be done in good faith.

(2) An employee or an agent of the Assembly who discloses information or material leading to the prosecution of an officer or member of the Assembly under this Act shall not be terminated, suspended or discriminated in any manner by the Assembly or its agent for the reason that he provided information or material leading to the prosecution of the officer or member of the Assembly.

**62. REGULATIONS.**

The Head of State, acting on advice, may make Regulations not inconsistent with this Act, prescribing all things that by this Act are required or permitted to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing –

- (a) fees to be paid in respect of services of licenses; and
- (b) penalties of fines not exceeding K5,000.00, for offence against the regulations.

**PART 11. – TRANSITIONAL MANAGEMENT.**

**63. INTERIM MOTU KOITA ASSEMBLY.**

(1) There is established an Interim Motu Koita Assembly for the purposes of governing the Motu Koita areas of the National Capital District in accordance with the provisions of this Part for the interim period.

(2) In the first 12 months of the operation of this Act, the Motu Koita Council established under the provisions of the repealed Part 9 of the *National Capital District Commission Act 2001* shall continue in establishment and perform the functions and powers of the Motu Koita Assembly as the Interim Motu Koita Assembly.

(3) The Interim Motu Koita Assembly shall comprise of the members of the Motu Koita Council established under the provisions of the repealed Part 9 of the *National Capital District Commission Act 2001*.

(4) The members of the Motu Koita Council holding office as such immediately before the coming into operation the National Capital District Commission (Amendment) Act 2007, are, on that coming into operation deemed to hold office under this Act as a member of the Interim Motu Koita Assembly.

(5) At the end of the first 12 months, the Interim Motu Koita Assembly will be dissolved and replaced by the Motu Koita Assembly established in accordance with Section 10 of the Act.

(6) After it is dissolved all members of the Interim Motu Koita Assembly are eligible for nomination and appointment to the Motu Koita Assembly.

Office of Legislative Counsel, PNG