

No. 18 of 1996.

***National Capital District Commission (Transfer of Assets, etc.) Act 1996.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 18 of 1996.

*National Capital District Commission (Transfer of Assets, etc.,) Act 1996.*

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***National Capital District Commission (Transfer of Assets, etc.) Act 1996,***

Being an Act to make provision for the transfer from the National Capital District Commission to NCD Water & Sewerage Pty Limited of the requirement to provide the supply of treated water and the treatment and disposal of sewage within the National Capital District and to vest in NCD Water & Sewerage Pty Limited the assets required for the supply of treated water and the treatment of sewage in the National Capital District, to provide for the payment of the net value of those assets after taking into account the value of all loans and grants to the National Capital District Commission from the State and all other Agencies and Institutions for the provision of those assets and for related matters.

**PART I. – PRELIMINARY.**

**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 (*qualified rights*) of the *Constitution*, namely:–

- (a) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

(2) For the purposes of–

- (a)<sup>1</sup> [*Repealed.*]

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<sup>1</sup> Section 1(2)(a) repealed by implication, *Organic Law on Provincial Government* repealed.

s. 2.

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- (b) Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*,

it is hereby declared that this Act relates to a matter of national interest.

(3) For the purposes of Section 53 (*Protection from unjust deprivation of property*), of the *Constitution* and of the *Land Act 1996*, the supply of treated water and the treatment and disposal of sewage in the National Capital District is declared to be a public purpose.

**2. INTERPRETATION.**

In this Act, unless the contrary intention appears—

“**assets**” means all of the property which at the date of the vesting notice is used or required to be used for the supply of treated water and the treatment and disposal of sewerage in and for the National Capital District;

“**liabilities**” means liabilities, debts, charges, duties and obligations of every description (whether present or future, actual or contingent, and whether to be paid in Papua New Guinea or elsewhere);

“**Minister**” means the Minister responsible for financial matters;

“**National Capital District Commission**” means the National Capital District Commission established pursuant to the provisions of Section 3 of the *National Capital District Commission Act 1990*;

“**property**” means all property, movable or immovable, and all estates, interests, easements and rights, whether equitable or in, to or out of property, contracts, chose-in-action, money and goodwill, and “vested”, in relation to property, includes rights to property which are future or contingent and rights in reversion and remainder;

“**rights**” means all rights, powers, privileges, and immunities, whether actual, contingent or prospective;

“**successor company**” means NCD Water & Sewerage Pty Limited, a company incorporated under the *Companies Act* (Chapter 146);

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

“**vesting date**” means the date specified in the vesting notice;

“**vesting notice**” means the notice by the Head of State under Section 3 appointing the vesting date.

**PART II. – VESTING OF PROPERTY IN SUCCESSOR COMPANY.**

**3. VESTING PROVISIONS.**

(1) Subject to this Act, the Head of State, acting with, and in accordance with, the advice of the Minister may, by notice in the National Gazette, appoint a vesting date and on such date all property, rights or liabilities of the National Capital District Commission or any other person or corporation whatever in respect of all water treatment and supply services and all sewage treatment and disposal services of or pertaining to the National Capital District specified in such notice shall, by virtue of this Act, be transferred to and vested in the successor company without any conveyance, assignment or transfer whatever.

(2) All property vested by virtue of Subsection (1) in the successor company shall be so vested in the successor company for the like title, estate or interest and on the like tenure as the same was vested or held immediately before the vesting date.

(3) Every chose-in-action vested by virtue of Subsection (1) in the successor company may, after the vesting date, be sued on, recovered or enforced by the successor company in its own name and it shall not be necessary for the successor company or the National Capital District Commission to give notice to the person bound by the chose-in-action of the vesting effected by Subsection (1).

(4) Every right and liability vested by virtue of Subsection (1) in the successor company may, on and after the vesting date, be sued on, recovered or enforced by or against the successor company in its own name and it shall not be necessary for the successor company or the National Capital District Commission to give notice to the person whose right or liability is affected by the vesting under Subsection (1).

(5) Any legal proceedings by or against the National Capital District Commission which relate to any property, right or liability transferred to and vested in the successor company by virtue of Subsection (1) may, on and after the vesting date, be continued by and against the successor company.

(6) In the case of rights and liabilities, arising under any loans which vest in the successor company on the vesting date, the successor company may enter into such arrangements or agreements over such rights and liabilities with the State or any third party as shall be necessary.

(7) Where by virtue of Subsection (1) any property is transferred to and vested in the successor company, the provisions of Section 25 of the *Land Registration Act 1981*, in relation to the registration of change of title shall be satisfied or complied with by the production to the Registrar of Titles of a copy of this Act and the Registrar of Titles shall on the production of such copy register the change in relation to the property without any further requirement.

(8) On and after the vesting date, any agreement relating to any property, rights and liabilities transferred to and vested in the successor company under Subsection (1) to which the National Capital District Commission was a party immediately before the vesting date, whether in writing or not, and whether or not of such a nature that rights and liabilities thereunder could be assigned by the National

Capital District Commission, shall have effect as if the successor company had been a party to the agreement.

#### **4. INITIAL STATE HOLDING IN THE SUCCESSOR COMPANY.**

(1) As a consequence of the vesting in the successor company of the property, rights and liabilities under Section 3, the successor company shall issue such securities of the successor company as the Minister shall direct—

- (a) to the Minister to be held in trust for the State; and
- (b) to the Minister responsible for Provincial and Local Government Affairs, to be held in trust for the State.

(2) The Minister shall not give a direction under Subsection (1) after the State has ceased to hold more than 51% of the shares in the successor company.

(3) Securities required to be issued pursuant to this Section shall be issued or allotted, as the Minister directs.

(4) Shares issued pursuant to this Section—

- (a) shall be of such nominal value as the Minister shall direct; and
- (b) shall be issued as fully paid and treated for the purposes of the *Companies Act 1997*, as if they had been paid up by virtue of the payment to the successor company of their nominal value.

(5) Any dividends or other sums received by the Minister or the Minister for Provincial and Local Government Affairs in right of, or on the disposal of any securities or rights acquired by virtue of this section, shall be paid into the Consolidated Revenue Fund.

#### **5. GOVERNMENT INVESTMENT IN SECURITIES OF THE SUCCESSOR COMPANY.**

(1) The Minister may at any time acquire—

- (a) securities of the successor company or of any subsidiary of the successor company; or
- (b) rights to subscribe for any such securities.

(2) The Minister may at any time dispose of securities acquired under this section.

(3) Any expenses incurred by the Minister in consequence of this Section shall be treated as investments and be authorized under Section 12(1) of the *Public Finances (Management) Act 1995*.

(4) Any dividends or other sums received by the Minister or the Minister for Provincial and Local Government Affairs in right of, or under this Section shall be paid into the Consolidated Revenue Fund.



**6. EXERCISE OF THE FUNCTIONS OF THE MINISTER FOR FINANCE THROUGH NOMINEES.**

(1) The Minister may appoint such person or persons as he thinks fit to act as his nominee or nominees for the purposes of Sections 4 or 5 and—

- (a) securities of the successor company may be assigned under Section 4 to any nominee of the Minister appointed for the purposes of that Section or to any person entitled to acquire the issue of the securities following their initial allotment to any such nominee; and
- (b) any such nominee appointed for the purposes of Section 5 may acquire securities or rights in accordance with that section.

(2) A person holding any securities or rights as a nominee of the Minister by virtue of Subsection (1) shall hold and deal with them on such terms and in such manner as the Minister may direct.

**7. VALUATION AND PAYMENT OF ASSETS TRANSFERRED TO THE SUCCESSOR COMPANY.**

(1) Immediately following the publication of the vesting notice the National Capital District Commission and the Auditor-General on behalf of the State, together with an independent third party jointly nominated by the National Capital District Commission and the Auditor-General, shall undertake a valuation of the assets being transferred to the successor company.

(2) In the event that the National Capital District Commission and the Auditor-General are unable to reach an agreement on the appointment of an independent third party, the Minister shall appoint the independent third party.

(3) The valuation required by Subsection (1) shall be completed within 90 days following the date of commencement and shall value the assets at their assessed value.

(4) After completion of the valuation required by Subsection (1) and after taking into account the unpaid total of all loans and the value of all grants relating to the assets, the outstanding amount thereof will be paid by the State or the National Capital District Commission, as the case may be, over a period not exceeding 10 years by equal instalments of principal together with interest at a rate to be agreed upon between the State and the National Capital District Commission.

**PART III. – PROVISIONS RELATING TO STAFF.**

**8. EMPLOYMENT OF STAFF.**

(1) The successor company shall accept into its employment on the vesting date every person who immediately before the date is a member of the water and sewerage division of the National Capital District Commission and who was given an offer of employment and who has agreed to serve as an employee of the successor company.

(2) Every person referred to in Subsection (1) shall be employed by the successor company on terms and conditions of service not less favourable than the terms and conditions of service to which he was entitled immediately before the vesting date.

**PART IV. – MISCELLANEOUS.**

**9. REGULATIONS.**

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and in general for giving effect to the successful transfer of the assets and liabilities to the successor company.

**10. ACTIONS, ETC., NOT TO ABATE.**

Notwithstanding anything in any other law, immediately before the coming into operation of this Act, any action, arbitration or proceeding which was pending or existing by or against the National Capital District Commission in relation to the assets—

- (a) continue, on the coming into operation of this Act, to be actions, arbitration or proceedings pending or existing by or against the National Capital District Commission; and
- (b) shall not, on the coming into operation of this Act, abate, or be discontinued or be in any way affected by any provision of this Act; and
- (c) shall be, on the coming into operation of this Act, prosecuted, continued and enforced by the National Capital District Commission against or in favour of a person or a body as if this Act had not been made.

Office of Legislative Counsel, PNG