

Chapter 144.

Business Groups Incorporation Act 1974.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 144.

Business Groups Incorporation Act 1974.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Business Groups Incorporation Act 1974,

Being an Act to provide for—

- (a) the incorporation of customary groups for business and other economic purposes; and
- (b) the control and regulation of the conduct of business by such groups, and for related purposes.

PART I. – INTRODUCTORY.

1. PURPOSES OF THIS ACT.

The purposes of this Act are to provide—

- (a) greater participation by local people in the national economy by the establishment by them of group business and other economic enterprises; and
- (b) for the use of sound principles in the management of business; and
- (c) some formal structure of business groups for the basic protection of the members of business groups and persons dealing with those groups; and
- (d) for the use of simple rules for the regulation and control of business groups; and
- (e) for the better and more effective settlement of certain disputes,

by—

- (f) the incorporation of certain customary and similar groups, and conferring on them, as corporations, power to—
 - (i) conduct business enterprises; and
 - (ii) borrow money; and

- (iii) acquire, hold, dispose of and manage land,
and of ancillary powers; and
- (g) the encouragement of self-resolution of disputes within such groups,
without requiring recourse to non-traditional courts.

2. INTERPRETATION.

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

“the appropriate Act”—

- (a) in relation to a company—means the *Companies Act 1997*; and
- (b) in relation to an incorporated association—means the *Associations Incorporation Act 1966*; and
- (c) in relation to a savings and loan society—means the *Savings and Loan Societies Act 1961*;

“the appropriate authority”—

- (a) in the case of a company or an incorporated association—means the Registrar of Companies; and
- (b) in the case of a savings and loan society, means the Registrar of Savings and Loan Societies;

“business group” means a customary group that is incorporated under Part III.;

“certificate of incorporation” means a certificate of incorporation issued under Section 11 or 15(1)(c);

“committee” means a committee of a business group;

“the constitution”, in relation to a business group, means the constitution of the group as set out in the certificate of incorporation;

“Deputy Registrar” means a Deputy Registrar of Business Groups appointed under Section 4(b);

“dispute-settlement authority” means a dispute-settlement authority provided for in accordance with Section 14(1)(i);

“the dispute-settlement authority”, in relation to a business group, means the dispute-settlement authority for the group;

“member” means a member of a business group;

“member of the committee”, in relation to a business group, means a member of the committee of the business group;

“recognized land group” means a group of persons recognized as a land group under the *Land Groups Incorporation Act 1974*;

“relevant custom”, in relation to a business group, means any custom named in the constitution so far as it is not abrogated by the constitution or this Act;

“the Registrar” means the Registrar of Business Groups appointed under Section 4(a);

“the regulations” means any regulations made under this Act;

“this Act” includes the regulations.

(2) Except where the contrary intention appears, a reference in this Act to the dispute-settlement authority in relation to a business group shall be read—

(a) in any case where the Registrar, after due inquiry and consultation with the members, is of the opinion that it would be inappropriate for the dispute-settlement authority to act, as a reference to—

(i) any Village Court within whose jurisdiction the group is; or

(ii) if there is no such Village Court, a customary authority having customary jurisdiction over the members of the group nominated by the Registrar, after due inquiry and consultation with the members; and

(b) subject to Subsection (3), where there are more dispute-settlement authorities than one—as a reference to such one (if any) of them as the Registrar determines, after due inquiry and consultation with the members.

(3) If, after inquiry and consultation as required by Subsection (2)(b), the Registrar is of the opinion that none of the dispute-settlement authorities is appropriate, Subsection (2)(a) applies.

(4) The powers of a Village Court under Subsection (2)(a)(i) shall be exercised by not less than three Village Magistrates.

3. BUSINESS GROUP NOT A CORPORATION FOR THE PURPOSES OF THE COMPANIES ACT.

A business group incorporated under this Act is not a corporation for the purposes of the *Companies Act 1997*.

PART II. – ADMINISTRATION.**4. APPOINTMENT OF REGISTRAR AND DEPUTY REGISTRARS.**

The Minister may, by notice in the National Gazette, appoint–

- (a) an officer to be the Registrar of Business Groups; and
- (b) as many officers to be Deputy Registrars of Business Groups as he considers necessary for the efficient administration of this Act.

5. DELEGATION.

The Registrar may, by instrument, delegate–

- (a) to a Deputy Registrar; and
- (b) with the approval of the Minister, to any other person,

all or any of his powers or functions under this Act (except this power of delegation).

6. SEAL OF REGISTRAR.

The Registrar shall have and use as the seal of his office a seal in such form as the Minister from time to time approves.

7. JUDICIAL NOTICE.

All courts, Judges and persons acting judicially shall take judicial notice of–

- (a) the signature of any person who holds or has held the office of Registrar or Deputy Registrar and of the fact that that person holds or has held that office; and
- (b) the seal of the Registrar.

8. INSPECTION.

(1) For the purpose of ascertaining whether a business group is complying with this Act, the Registrar, a Deputy Registrar or a person authorized by the Registrar or a Deputy Registrar may inspect, and may require an officer or employee of the group or member of the committee of the group to produce to him, any book, minute book, register or record required by this or any other Act to be kept by the group.

(2) A person who fails to comply with a request under Subsection (1) is guilty of an offence.

(3)¹ ²A person who hinders or obstructs the Registrar, a Deputy Registrar or a person authorized by the Registrar or a Deputy Registrar in the exercise of any of the powers conferred by Subsection (1) is guilty of an offence.

¹ Section 8(3) repealed and replaced by *Business Groups Incorporation (Amendment) Act 1994* (No. 14 of 1994), s1.

² Section 8(3) repealed and replaced by *Business Groups Incorporation (Amendment) Act 1994* (No. 14 of 1994), s1.

Penalty: A fine not exceeding K2,000.00.

9. EXAMINATION BY REGISTRAR, ETC.

(1) Where he thinks it necessary to do so to enable him to exercise any of his powers or functions under this Act, the Registrar or a Deputy Registrar may—

(a) require—

- (i) a member of a committee of, or a member, officer or employee of, a business group, or a dispute-settlement authority; or
- (ii) a person whom he has reasonable cause to believe is involved, or is about to become involved, in the promotion or formation of a proposed business group,

to provide the Registrar or the Deputy Registrar, as the case may be, with any information in his possession that he may reasonably require, or to appear before him for examination on oath or affirmation; or

(b) apply to a District Court for the examination by that Court of any person specified in Paragraph (a)(i) or (ii).

(2) A person examined under Subsection (1) is not entitled to refuse to answer any question which is relevant and material to the examination on the ground that his answer might tend to criminate him, but he must be informed that he is entitled to claim that the answer to a question put to him might tend to criminate him.

(3) Where a person examined under Subsection (1) claims that the answer to a question put to him might tend to criminate him, his answer may not be used in any subsequent criminal proceedings except in the case of a charge of false swearing committed by him in answer to the question.

(4) A person who, when required to do so by the Registrar or a Deputy Registrar—

- (a) fails to provide the information required; or
- (b) fails to appear for examination; or
- (c) fails or refuses to answer any question put to him; or
- (d) gives an untruthful answer to any question put to him,

is guilty of an offence.

Penalty: ³A fine not exceeding K2,000.00 or imprisonment for a term not exceeding three months, or both.

(5) Unless the Registrar, a Deputy Registrar or the court, as the case may be, otherwise orders, an examination under this section is not open to the public.

10⁴. [REPEALED.]

³ Section 9(4) Penalty clause amended by *Business Groups Incorporation (Amendment) Act 1994* (No. 14 of 1994), s2.

PART III. – INCORPORATION OF CUSTOMARY BUSINESS GROUPS, ETC.***Division 1.******Incorporation of Business Groups.*****11. MANNER OF INCORPORATION.**

(1) Subject to Section 12, on application by or on behalf of the group by not less than three members of the proposed committee and after payment of the prescribed fee, the Registrar may incorporate a customary group of persons as a business group, by issuing to it a certificate of incorporation.

(2) The application under Subsection (1) may be made orally to a Deputy Registrar who shall reduce it to writing, and the applicants shall—

- (a) supply all the details that by this Act are required to be shown on the certificate of incorporation; and
- (b) if required by the Deputy Registrar, supply a list of members of the group and such further information as the Registrar requires.

(3) Incorporation shall not be refused to a group simply because—

- (a) the members are part only of a customary group; or
- (b) the group includes persons who are not members of the primary customary group, if the Registrar is satisfied that those persons regard themselves, and are regarded by the others, as bound by the relevant customs of the primary customary group; or
- (c) the members comprise all or part of a recognized land group,

or a combination of those circumstances.

(4) The Registrar shall refuse incorporation if he is satisfied that the group characteristics are so temporary, evanescent or doubtful that the group does not have a corporate nature.

(5) The Registrar may refuse incorporation if he is satisfied that—

- (a) the group is not a customary group and has no real connection with such a group; or
- (b) the group contains persons who are not members of the customary group applying for incorporation; or
- (c) the group contains members who are not natural persons; or
- (d) some other form of incorporation or of organization under some other Act would be more appropriate and effective.

(6) Except with the consent of the Minister, the Registrar shall not incorporate a group by a name that, in the opinion of the Registrar, is undesirable, or is a name, or is a name of a kind, that the Minister has directed the Registrar not to accept.

⁴ Section 10 repealed by *Business Groups Incorporation (Amendment) Act 1994* (No. 14 of 1994), s3.

(7) The name of a business group shall end with the words “Business (Inc.)” or “Business Group (Inc.)”.

(8) If the Registrar refuses incorporation, he shall give a written statement to the applicant of his reasons for the refusal.

(9) A certificate of incorporation shall set out the constitution of the group.

12. NOTICE OF APPLICATION FOR INCORPORATION.

(1)⁵ ⁶Before incorporating a group, the Registrar may call for and consider—

(a) comments from the proposed dispute-settlement authority; and

(b) any other information that he thinks relevant.

(2)⁷ ⁸The comments referred to in Subsection (1)(a) include comments on—

(a) any relevant matter referred to in Section 11(3) or (4); and

(b) the proposed constitution; and

(c) the form and likely efficacy of the proposed method of dispute settlement; and

(d) any other matter relevant to the question, how appropriate would the proposed incorporation be; and

(e) whether the proposed dispute-settlement authority is willing and able to act.

13. REGISTERS OF BUSINESS GROUPS.

(1) The Registrar shall—

(a) keep or cause to be kept, in the prescribed manner; and

(b) retain for the prescribed period,

a register or registers of business groups.

(2) The register or registers shall contain—

(a) copies of all applications for incorporation; and

(b) copies of all certificates of incorporation issued under Section 11; and

(c) copies of all certificates of incorporation issued under Section 15(1)(c); and

(d) all certificates given under Section 15(2); and

⁵ Section 12(1) repealed and replaced by *Business Groups Incorporation (Amendment) Act 1994* (No. 14 of 1994), s4(a).

⁶ Section 12(1) repealed and replaced by *Business Groups Incorporation (Amendment) Act 1994* (No. 14 of 1994), s4(a).

⁷ Section 12(2) amended by *Business Groups Incorporation (Amendment) Act 1994* (No. 14 of 1994), s4(b).

⁸ Section 12(2) amended by *Business Groups Incorporation (Amendment) Act 1994* (No. 14 of 1994), s4(b).

- (e) all comments received under Section 12 or 15; and
- (f) all orders made under Sections 28, 29 and 35; and
- (g) the records of all appeals under Section 44; and
- (h) copies of all accounts and records directed to be kept in the register or registers under Section 24(2)(b); and
- (i) a record of any information supplied to the Registrar under Sections 11(2) and 46; and
- (j) copies of all statements by the Registrar under Sections 11(8) and 15(3); and
- (k)⁹ [*Repealed.*]
- (l) copies of all statements of assets and liabilities; and
- (m) such other matters as are prescribed.

(3) The production of a register or of a copy of, or extract from, a register certified by the Registrar, or a person authorized by the Registrar for the purpose, to be a register of business groups, or a copy of an extract from a register of business groups, is evidence of the matters contained in it.

(4) The part of a register dealing with a business group or a group the incorporation of which has been applied for shall be open to inspection at all reasonable times by any person on payment of the prescribed fee.

Division 2.

The Constitution.

14. CONTENTS OF CONSTITUTION.

(1) In addition to any other matter required by this Act, the constitution of a business group as set out in the certificate of incorporation must set out—

- (a) the name of the group; and
- (b) the qualifications (and disqualifications if any) for membership of the group; and
- (c) the title, composition, membership and manner of appointment of the committee or other controlling body of the group; and
- (d) a provision that the committee or other controlling body of the group must at all times comprise not less than three members of the group; and
- (e) the names of the first members of the committee; and
- (f) the manner in which the group acts, and the manner in which its acts are evidenced; and

⁹ Section 13(2)(k) repealed by *Business Groups Incorporation (Amendment) Act 1994* (No. 14 of 1994), s5.

- (g) any limitations and conditions of the exercise of the powers conferred by this Act on the group; and
- (h) the name, or other means of identification, of any relevant custom in accordance with which, or subject to which, the group is to act; and
- (i) details, as required by Section 40, of the proposed dispute-settlement authority and the rules (if any) applicable to it; and
- (j) a postal address for service; and
- (k) any other matters that the group, with the approval of the Registrar, desires to have included in its constitution; and
- (l) any other prescribed matters.

(2) Notwithstanding Subsection (1)(f), the constitution may contain rules subject to which the group is to act in substitution for any or all relevant custom.

15. VARIATION.

- (1) On application by a business group, the Registrar may—
- (a) vary the constitution of the group; and
 - (b) cause the relevant register of business groups to be amended accordingly; and
 - (c) recall the certificate of incorporation and issue an amended certificate.

(2)¹⁰ ¹¹Unless the Registrar certifies that a variation applied for is of no practical or legal significance, he may call for and consider comments on the proposed variation from the dispute-settlement authority prior to taking action under Subsection (1).

(3) If the Registrar refuses to vary the constitution, he shall give to the group a written statement of the reasons for his refusal.

16. PROOF OF CONSTITUTION, ETC.

- (1) A document purporting to be—
- (a) the certificate of incorporation of a business group; and
 - (b) signed and sealed by or on behalf of the Registrar,

is, in the absence of proof to the contrary, conclusive evidence of the matters set out in it.

(2) A certificate under the hand and seal of the Registrar or a person authorized by the Registrar—

- (a) that at a certain time the constitution of a business group did or did not contain a certain provision; or

¹⁰ Section 15(2) repealed and replaced by *Business Groups Incorporation (Amendment) Act 1994* (No. 14 of 1994), s6.

¹¹ Section 15(2) repealed and replaced by *Business Groups Incorporation (Amendment) Act 1994* (No. 14 of 1994), s6.

(b) setting out the constitution of a business group as at a certain time, is conclusive evidence of the facts certified.

Division 3.

Effect of Incorporation.

17. STATUS OF BUSINESS GROUPS.

(1) A business group—

- (a) is a corporation; and
- (b) has perpetual succession; and
- (c) may sue and be sued in its corporate name; and
- (d) for the purpose of the more effective exercise and performance of its powers and functions, may do and suffer all things that a corporation may do or suffer.

(2)¹² ¹³Unless the Registrar certifies that a variation applied for is of no practical or legal significance, he may call for and consider comments on the proposed variation from the dispute-settlement authority prior to taking action under Subsection (1).

(3) If the Registrar refuses to vary the constitution, he shall give to the group a written statement of the reasons for his refusal.

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(1) A document purporting to be—

- (a) the certificate of incorporation of a business group; and
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is, in the absence of proof to the contrary, conclusive evidence of the matters set out in it.

(2) A certificate under the hand and seal of the Registrar or a person authorized by the Registrar—

- (a) that at a certain time the constitution of a business group did or did not contain a certain provision; or
- (b) setting out the constitution of a business group as at a certain time,

is conclusive evidence of the facts certified.

¹² Section 17(2) amended by *Business Groups Incorporation (Amendment) Act 1987* (No. 33 of 1987), s2.

¹³ Section 17(2) amended by *Business Groups Incorporation (Amendment) Act 1987* (No. 33 of 1987), s2.

Division 3.
Effect of Incorporation.

17. STATUS OF BUSINESS GROUPS.

(1) A business group—

- (a) is a corporation; and
- (b) has perpetual succession; and
- (c) may sue or be sued in its corporate name; and
- (d) for the purpose of the more effective exercise and performance of its powers and functions, may do and suffer all things that a corporation may do or suffer.

(2)^{14 15} Subject to the provisions of the *Land (Tenure Conversion) Act 1963*, for the purposes of any law (other than the purpose of holding or dealing in rights or interests in customary land) a business group shall, except where the context makes it inappropriate, be deemed to be a native within the meaning of the pre-Independence *Ordinances Interpretation Act 1949-1973*.

(3) Subsections (1) and (2) do not make a business group liable in any criminal proceedings in which, apart from the operation of this section, it would not be liable.

18. POWERS OF BUSINESS GROUPS.

(1) The powers of a business group shall—

- (a) be regulated and exercised in accordance with, and subject to any conditions or limitations imposed by, its constitution and any relevant custom; and
- (b) be exercised in the manner specified by its constitution or any relevant custom.

(2)^{16 17} Subject to this Act and to the *Land (Tenure Conversion) Act 1963*, a business group may—

- (a) do all things that may lawfully be done by a corporation; and
- (b) do all things that are set out in its constitution or that are allowed by this Act; and
- (c) acquire, hold and dispose of land and rights in or in respect of land (other than customary land); and
- (d) invest its moneys in or on any security; and
- (e) open and operate bank accounts; and

¹⁴ Section 17(2) amended by *Business Groups Incorporation (Amendment) Act 1987* (No 33 of 1987, s2.

¹⁵ Section 17(2) amended by *Business Groups Incorporation (Amendment) Act 1987* (No 33 of 1987, s2.

¹⁶ Section 18(2) amended by *Business Groups Incorporation (Amendment) Act 1987* (No. 33 of 1987), s3.

¹⁷ Section 18(2) amended by *Business Groups Incorporation (Amendment) Act 1987* (No. 33 of 1987), s3.

- (f) borrow money by way of fixed charge over some or all of the assets of the group; and
- (g) secure the repayment of money so raised or borrowed, or the payment of a debt or liability of the group, by giving mortgages, charges or securities on or over all or any of the property of the group,

and has any other powers necessary or convenient for the exercise of those powers.

(3) A business group shall not—

- (a) borrow money from the public; or
 - (b) make any invitation to the public—
 - (i) to deposit money with; or
 - (ii) lend money to,
- the group.

19. MEETINGS OF MEMBERS.

(1) The committee of a business group may call a meeting of the members of the group at any time.

(2) The committee of a business group, when directed by the Registrar, a Deputy Registrar or the dispute-settlement authority, must call a meeting of members.

Penalty: A fine not exceeding K200.00.

20. FORMALITIES OF GROUP ACTION.

Notwithstanding any other law prescribing the manner in which a corporation must act, it is sufficient in point of form if a business group acts—

- (a) in accordance with a provision of its constitution to which Section 14(1)(f) applies; or
- (b) by an agent authorized for the purpose.

Division 4.

Finance.

21. BANK ACCOUNTS.

The committee must—

- (a) cause such bank accounts as are necessary for the proper conduct of the business affairs of the group to be opened and maintained; and
- (b) pay all moneys received by the group in connection with its business activities into those accounts; and

- (c) pay all moneys that the group is required to pay in connection with its business activities out of those accounts.

Penalty: ¹⁸A fine not exceeding K2,000.00.

22. ISSUE OF RECEIPTS.

The committee of a business group shall cause receipts to be issued for all capital moneys collected by or on behalf of the group.

23. STATEMENTS OF ASSETS AND LIABILITIES.

The committee of a business group shall—

- (a) cause to be prepared, in a form approved by the Registrar, a statement of the assets and liabilities of the group for each period of 12 months of the operations of the group or for such longer period as the Registrar approves; and
- (b) lodge the statement with the Registrar not more than three months after the end of the period to which the statement relates.

24. FINANCIAL INSTRUCTIONS.

(1) The Registrar may direct that accounts and records of some or all of the affairs of a business group be kept in such manner as he thinks proper.

(2) Where the Registrar gives a direction under Subsection (1)—

- (a) the Registrar, a Deputy Registrar, the dispute-settlement authority or any member is entitled at all times to inspect the accounts and records; and
- (b) the Registrar may direct that copies of the accounts and records be given to him to be kept in the register of business groups.

25. PAYMENTS BY MEMBER OF A BUSINESS GROUP DEEMED TO BE CONTRIBUTIONS.

Except where it is proved to the contrary, any payment to a business group by a member of the group, whether made by way of money or services or otherwise, shall be deemed to be a contribution of capital to the group by the member.

26. PAYMENT OF DIVIDENDS.

(1) For the purposes of this section—

“**distributable profit**” means the sum of the assets less liabilities;

“**liabilities**” includes capital contributions less tax payable.

¹⁸ Section 21: Penalty clause amended by *Business Groups Incorporation (Amendment) Act 1994* (No. 14 of 1994), s7.

(2) At any time after the lodging of its statement of assets and liabilities with the Registrar the committee of a business group may distribute to the members of the group, in such manner as it thinks fit, all or any of the distributable profit of the group earned during the period to which that statement relates.

(3) Notwithstanding Subsection (2), it is an offence to distribute any or all of the profits of a business group directly or indirectly to a person other than a native within the meaning of the pre-Independence *Ordinances Interpretation Act* 1949-1973, whether or not that person is a member.

Penalty: ¹⁹A fine not exceeding K2,000.00.

(4) A person, other than a native within the meaning of the pre-Independence *Ordinances Interpretation Act* 1949-1973, who accepts money or money's worth directly or indirectly from a business group, knowing it to be a distribution of the distributable profits of the group to himself, is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years.

(5) At the time of the conviction or at any later time, the court by which a person is convicted of an offence against Subsection (4) may, in addition to any penalty that it may impose, order the person convicted to repay to the business group the money received.

27. CHARGES.

(1) The Registrar shall—

- (a) keep a register in the prescribed form of all the fixed charges lodged for registration under this section; and
- (b) enter in the register with respect to each such charge—
 - (i) the amount secured by the charge; and
 - (ii) a description sufficient to identify the property charged; and
 - (iii) the name of the person entitled to the charge.

(2) Where a person takes a charge over any property or other asset of a business group, the charge—

- (a) does not, unless registered under this section, rank for priority in the winding-up of the business group otherwise than as an unsecured debt; and
- (b) when registered, ranks for priority as a secured debt according to the time of registration.

(3) No charge other than a fixed charge may be given by a business group or registered under this section.

¹⁹ Section 26(3) Penalty clause amended by *Business Groups Incorporation (Amendment) Act* 1994 (No. 14 of 1994), s8.

(4) A charge to which this section applies need not be registered, and is not subject to avoidance, under the *Instruments Act 1953*, and, on registration under this section, a charge that, but for this subsection, should be registered under that Act has effect, and is as valid, for all purposes as if it had been duly registered under that Act.

(5) Where—

- (a) the debt for which a registered charge was given has been paid or satisfied in whole or in part; or
- (b) any property or asset subject to a registered charge has been released from the charge or has ceased to form part of the property or assets of the business group concerned,

the committee may lodge with the Registrar in the prescribed form a memorandum of the fact that the property or asset or any part of it has—

- (c) been released from the charge; or
- (d) ceased to form part of the property or assets of the business group,

as the case may be, and the Registrar shall enter particulars of the memorandum in the register.

(6) The memorandum referred to in Subsection (5) shall be supported by such evidence as the Registrar requires to satisfy him of the payment, satisfaction, release or ceasing referred to in that subsection.

Division 5.

Winding-up.

28. MANNER OF WINDING-UP BY THE REGISTRAR.

(1) On receipt of—

- (a) a request by a business group; or
- (b) a request by a creditor or some or all of the creditors of a business group; or
- (c) a report from—
 - (i) the dispute-settlement authority; or
 - (ii) a Village Court having jurisdiction over the group; or
 - (iii) some other court dealing with a dispute under Section 42,

that a business group or the affairs of a business group is or are in such a condition that its continued incorporation is undesirable,

the Registrar may order that the affairs of the group be wound up.

(2) If the Registrar is satisfied, on reasonable grounds, that—

- (a) a business group has ceased to act as such; or
- (b) the circumstances of or circumstances affecting a business group have become such that, if the group were applying for incorporation under Section 11, he would refuse incorporation; or
- (c) a business group is unable, and is unlikely within a reasonable time to become able, to pay its debts; or
- (d) a business group has refused or failed to comply with a direction of the Registrar under Section 38; or
- (e) the affairs or activities of a business group, or of the dispute-settlement authority of a business group, are so conducted as to be, subject to any relevant custom, oppressive or unfair to any of the members; or
- (f) a business group has failed to provide a statement of its assets and liabilities for not less than two successive years; or
- (g) for any other reason it is just and equitable that the affairs be wound up,

the Registrar may, of his own motion, order that the affairs of the group be wound up.

(3) Before making an order on a request under Subsection (1)(a) or (b), the Registrar may order the business group or the creditor, as the case may be, to prepare and lodge with him a statement of the affairs of the group, in a form, and certified as to its accuracy in the manner, approved by the Registrar.

(4) Where the Registrar gives to a creditor an order under Subsection (3), Section 8, with the necessary modifications, applies as though references in that section were references to the creditor.

(5) The costs of the preparation of a statement of the affairs of a business group under Subsection (3) shall—

- (a) where an order is made for the winding-up of the business group—form part of the costs of the winding-up; and
- (b) where the Registrar refuses to make an order for the winding-up of the business group—be borne by the group or the creditor, as the case may be.

(6) Before making an order under Subsection (1) or (2), the Registrar—

- (a) shall give reasonable opportunity to the group and to any other interested person to make representations on the question of the proposed winding-up; and
- (b) may give directions as to the removal of the cause of the proposed winding-up and delay making the order until the result is known.

(7) The winding-up of the affairs of the group shall be carried out by the Registrar, a Deputy Registrar or a person appointed by the Registrar for the purpose, in such manner as the Registrar directs.

(8) Where the group or a member of the group refuses or fails to do any thing that, in the opinion of the Registrar, a Deputy Registrar or the person winding-up the affairs of the group, is necessary or desirable for the purposes of the winding-up, the Registrar, Deputy Registrar or person may do the thing for and in the name of the group or the member, as the case may be.

(9) Where an order is made under Subsection (1) or (2), this Act ceases to apply to and in relation to the group except to the extent necessary to allow its affairs to be wound up.

(10)²⁰ ²¹Where an order is made by the Registrar under Subsection (1) on the grounds set out in Subsection (2) and no response has been received from an interested party under Subsection (6), the Registrar shall—

- (a) remove the group from the register; and
- (b) dissolve the group with effect from the date of its removal from the register.

29. MANNER OF WINDING-UP BY THE COURT.

(1) A creditor, including a contingent or prospective creditor, may—

- (a) in a case where the Registrar has refused to make an order for the winding-up of a business group under Section 28(1) and the Minister has dismissed an appeal against that refusal; or
- (b) in any case, instead of requesting the Registrar to make an order for the winding-up of a business group,

present a petition to the National Court for the winding-up of the group.

(2) The National Court may order the winding-up of a business group for any of the reasons specified in Section 28(2).

(3) Where a petition is presented to the National Court under Subsection (1), Part XVIII of the *Companies Act 1997*, with the necessary modifications, apply as if the business group were a company.

30. POWER TO STAY WINDING-UP.

(1) At any time after an order for winding-up has been made, the National Court or the Registrar may—

- (a) on the application of the Registrar or of a creditor, member of the committee or member; and
- (b) on proof to its or his satisfaction that the proceedings should be stayed,

make an order staying all proceedings on the winding-up of a business group, either altogether or for a limited period, on such terms and conditions as it or he thinks fit.

²⁰ Section 28(10) inserted by *Business Groups Incorporation (Amendment) Act 1994* (No. 14 of 1994), s9.

²¹ Section 28(10) inserted by *Business Groups Incorporation (Amendment) Act 1994* (No. 14 of 1994), s9.

(2) Before making an order on an application under Subsection (1), the National Court may require the Registrar to furnish a report with respect to any facts or matters that in its opinion are relevant.

31. PROOF AND RANKING OF CLAIMS.

(1) Subject to the application in accordance with this Act of any law relating to bankruptcy, in every winding-up of a business group—

- (a) all debts payable on a contingency; and
- (b) all claims (present or future, certain or contingent, ascertained or sounding only in damages) against the group,

are admissible to proof against the group, a just estimate being made so far as possible of the value of such debts or claims as—

- (c) are subject to a contingency; or
- (d) sound only in damages; or
- (e) for some other reason do not bear a certain value.

(2) Subject to Section 32, in the winding-up of an insolvent business group—

- (a) the same rules apply with regard to—
 - (i) the respective rights of secured and unsecured creditors; and
 - (ii) debts provable; and
 - (iii) the valuation of annuities and future and contingent liabilities,

as apply under the law relating to bankruptcy in relation to the estates of bankrupt persons; and
- (b) all persons who in any case would be entitled to prove for and receive dividends out of the assets of the business group may come in under the winding-up and make such claims against the business group as they respectively are entitled to make under this section.

32. PAYMENT OF DEBTS.

The following rules apply in the winding-up of a business group:—

- (a) all debts secured by registered charges (other than debts of members) have first priority to the extent of the debts secured, and, as between themselves, rank for priority in accordance with Section 27(2)(b); and
- (b) any costs of or incidental to the winding-up have second priority; and
- (c) all amounts due in respect of workers' compensation under any law relating to workers' compensation have third priority; and
- (d) all amounts—

- (i) of rates that are or are in the nature of local government rates and that—
 - (A) are due from the business group at the date of commencement of the winding-up; and
 - (B) became due and payable within the period of 12 months before that date; and
- (ii) of assessed income tax, being a tax assessed under any Act before the date of commencement of the winding-up and not exceeding in the whole one year's assessment; and
- (iii) due and payable—
 - (A) by way of repayment of any advance made to the business group; or
 - (B) in payment of any amount owing by the business group for goods supplied or services rendered to it under any Act relating to or providing for the improvement, development or settlement of land or aid to, or the development or encouragement of, mining,
have fourth priority; and
- (e) the debts in each class specified in Paragraphs (b), (c) and (d) rank equally between themselves, and shall be paid in full unless the property of the business group is insufficient to meet them, in which case they abate in equal proportions as between themselves; and
- (f) all creditors who are not members of the group shall be paid in priority to creditors who are members; and
- (g) unsecured creditors (other than members of the group) rank equally as between themselves; and
- (h) secured creditors who are members of the group rank equally as between themselves; and
- (i) unsecured creditors who are members of the group rank equally as between themselves.

33. SETTLEMENTS, PREFERENCES, ETC.

(1) If a business group is wound up, a settlement, conveyance, transfer, charge, delivery of goods, payment, execution or other act relating to property made or done by or against a business group which, had it been made or done by or against an individual, would be void or voidable in his bankruptcy, is void or voidable in the same manner.

(2) For the purposes of this section, the date that corresponds with the date of presentation of the bankruptcy petition in the case of an individual is the date of the request or report for a winding-up, as the case may be, made under Section 28.

(3) A transfer or assignment by a business group of all its property to trustees for the benefit of all its creditors is void.

34. LIABILITY OF MEMBERS.

(1) Unless the constitution of the group or any relevant custom provides otherwise, the liability of a member, other than a member of the committee, of a business group on the winding-up of the group is limited to the amount of his interest in the property of the group, plus any amount owing by him to the group.

(2) Notwithstanding Subsection (1), a member of a committee is liable, beyond his liability as a member of the group, for any debts of the group incurred during the period in which he was a member of the committee.

35. DISTRIBUTION OF SURPLUS PROPERTY ON DISSOLUTION.

²²(1) Subject to Subsections (2) and (3), when the affairs of a business group have been wound up, the Registrar shall, by written order, dissolve the group and vest any property remaining after payment or settlement of all known debts—

- (a) as provided in the constitution of the group; or
- (b) in default of any such provision, as agreed on by the group; or
- (c) in default of any agreement or provision referred to in Paragraph (a) or (b), in accordance with the relevant custom; or
- (d) in default of any agreement, provision or custom referred to in Paragraph (a), (b) or (c), as determined by the dispute-settlement authority.

(2) Where a business group is dissolved under Section 28(10) and there remains any outstanding property wherever located that was vested in the group or to which the group was entitled, the property is, for the purposes of this Division and notwithstanding any enactment or rule of law to the contrary, vested by virtue of this section in the Registrar for all the estate and interest (legal and equitable) of the group in it at the date when the group was dissolved, together with all claims, rights and remedies that the group then had in respect of it.

(3) The Registrar may sell or otherwise dispose of, or deal with, any property or part thereof vested in him by virtue of Subsection (2) as he thinks fit.

36. DISSOLUTION FOR PURPOSE OF RE-INCORPORATION, ETC.

Where the Registrar is satisfied that the winding-up of a business group is proposed for the purpose of or consequent on the incorporation of the group under an appropriate Act, by virtue of which the assets and liabilities of the group as incorporated under this Act have become or will become assets and liabilities of the group as incorporated under that other Act, he may make an order dissolving the

²² Section 35 repealed and replaced by *Business Groups Incorporation (Amendment) Act 1994* (No. 14 of 1994), s10.

group as a corporation under this Act from a date specified in the order, and the provisions of this Part do not apply.

PART IV. – CONVERSION.**37. CONVERSION OF A CORPORATION INTO A BUSINESS GROUP.**

(1) A corporation incorporated or registered under an appropriate Act may apply for re-incorporation as a business group by–

(a) lodging with the Registrar–

(i) in the case of–

(A) a company–a copy of a special resolution made under Section 88 of the *Companies Act 1997*; and

(B) an incorporated association–a copy of a special resolution made under Section 22 of the *Associations Incorporation Act 1966*; and

(C) a savings and loan society–a copy of a special resolution made under the *Savings and Loan Societies Act 1961*,

determining to convert to a business group and specifying an appropriate alteration to its name; and

(ii) in all cases–

(A) a certificate by the appropriate authority that the corporation has to the best of its knowledge complied with all the provisions of the Act under which it is incorporated; and

(B) the prescribed fee; and

(b) complying with Section 11.

(2) Where a corporation has complied with Subsection (1), the Registrar, on being satisfied that the corporation is eligible for incorporation as a business group, shall incorporate the corporation as a business group and issue to it a certificate of incorporation.

(3) Where a corporation is incorporated under Subsection (2) as a business group–

(a) the registration or incorporation of the corporation under any other Act ceases to have effect and that Act ceases to apply to it; and

(b) subject to the succeeding provisions of this section, this Act, with the necessary modifications, applies to it as though it had been incorporated as a business group from the date on which it had been registered or incorporated under the Act that, on the date immediately preceding the date of incorporation under this Act, applied to it.

(4) A right that was enforceable by or against a corporation referred to in Subsection (1) immediately before its re-incorporation under this Act is, by virtue of this section, enforceable on that re-incorporation by or against the corporation as re-incorporated under this Act.

(5) All the estate, right, title and interest, both legal and equitable, in and to any property vested in a corporation referred to in Subsection (1) immediately before its re-incorporation under this Act is on that re-incorporation divested, by virtue of this section and without the necessity of any formal deed of assurance, from that first-mentioned corporation and vested in the corporation as re-incorporated under this Act.

(6) Where any property vested in a business group under this section is land registered under the *Land Registration Act 1981*, the Registrar of Titles shall, without formal transfer and without fee, on application in that behalf by the business group, enter or register the business group in the appropriate register and on the grant, certificate of title, lease or other instrument evidencing title to the land as the owner of the land within the meaning of that Act.

38. CONVERSION FROM A BUSINESS GROUP.

(1) Where the Registrar is of the opinion that a business group should, for any reason, be incorporated under some other Act relating to the incorporation of groups he may direct the group to apply to the appropriate authority for incorporation under that Act.

(2) A business group that refuses or fails to comply with a direction of the Registrar under Subsection (1) may be wound up by order of the Registrar.

(3) Nothing in this section requires the appropriate authority to accept an application for incorporation from, or to incorporate, a business group otherwise than in accordance with the appropriate Act.

PART V. – DISPUTE SETTLEMENT.**39. APPLICATION AND INTERPRETATION OF PART V.**

(1) This Part applies to disputes between–

- (a) a business group and a member of the group; or
- (b) members of a business group,

concerning the property or the affairs of the group, including–

- (c) the distribution or disposal of any property or income of the group; and
- (d) any transaction between the group and any of its members,

but, except by agreement, does not apply to any dispute between the group, or a member of the group, and a non-member.

(2) This Part also applies to disputes as to membership of, or the right to membership in, a business group.

(3) In this Part, a reference to a party or to a person interested in a dispute includes a reference to a person whose interest in the dispute is real, though not necessarily or immediately financial.

40. DISPUTE-SETTLEMENT AUTHORITIES.

(1) In order to be incorporated, each business group must have at least one dispute-settlement authority.

(2) A dispute-settlement authority may be a person or a number of persons–

- (a) specified by name; or
- (b) specified by office or position; or
- (c) determined in the manner specified,

in the constitution of the group.

(3) Notwithstanding Subsection (2), the parties to a dispute to which this Part applies may, with the consent of the group, agree on an *ad hoc* dispute-settlement authority in relation to the dispute.

41. SETTLEMENT OF DISPUTES.

All disputes to which this Part applies shall be dealt with, in accordance with Sections 42 and 43, by the dispute-settlement authority or a court having jurisdiction under Section 42.

42. JURISDICTION OF COURTS.

(1) No court has jurisdiction over a dispute to which this Part applies unless–

- (a) all parties agree that it should be referred to the court; or

- (b) the constitution of the business group concerned so provides; or
- (c) any relevant agreement between the business group and a party so provides; or
- (d) the dispute-settlement authority thinks that—
 - (i) it cannot satisfactorily settle the dispute; and
 - (ii) the court may be able to do so.

(2) The dispute-settlement authority has jurisdiction to decide any matter referred to in Subsection (1)(a), (b) or (c), and its decision is not open to challenge in any court.

(3) Where under Subsection (1) a dispute may be referred to a court—

- (a) the court must be a court that, apart from the effect of this Part, has jurisdiction in the matter; and
- (b) it shall be referred, in the prescribed manner, by the dispute-settlement authority; and
- (c) the dispute-settlement authority is entitled to act, and if the court or a person interested so asks shall act, as an assessor on matters of custom and as to matters of common knowledge within the group, but—
 - (i) the advice shall be given in open court and is open to challenge; and
 - (ii) if for good reason the court considers it proper to do otherwise it is not bound to accept the advice.

43. LAW TO BE APPLIED.

A dispute-settlement authority or a court dealing, under Section 42, with a dispute to which this Part applies—

- (a) is not bound by any law or rule of law, practice or procedure other than this Act; and
- (b) may inform itself on any matter in such manner as it thinks fit; and
- (c) shall not make a decision about any matter without calling for and hearing any argument made on the matter; and
- (d) shall endeavour to do substantial justice between all persons interested, in accordance with this Act, the constitution of the business group concerned and any relevant custom.

44. APPEAL AND REVIEW.

(1) Subject to this section, a decision under this Part by a dispute-settlement authority or by a court is not subject to appeal or review by any court.

(2) A person aggrieved by a decision of a dispute-settlement authority or a court (other than the National Court) may require that the decision be reviewed and, if necessary, the matter be re-opened in accordance with this section.

(3) Subject to Subsection (4), the decision shall be reviewed in the first instance, as if the grievance were the subject matter of a new dispute, by an *ad hoc* dispute-settlement authority appointed in accordance with Section 40(3).

(4) If—

- (a) an *ad hoc* dispute-settlement authority cannot be agreed on; or
- (b) the decision on the review differs from the original decision and a person aggrieved by the difference so requires,

the matter shall be reviewed by a Village Court consisting of not less than three Village Magistrates having jurisdiction over the members of the group, sitting with—

- (c) the members of the original dispute-settlement authority; and
- (d) the members of the *ad hoc* dispute-settlement authority (if any); and
- (e) such other customary authorities having customary jurisdiction over the members of the group as the Village Court thinks appropriate,

but the decision of the Village Court is the decision on the review.

(5) If in a case to which Subsection (4)(a) or (b) applies there is no Village Court referred to in that subsection, the jurisdiction of the Village Court under that subsection shall be exercised by a customary authority having customary jurisdiction over the members of the group, nominated by the Registrar after due inquiry and consultation with the members of the group.

PART VI. – MISCELLANEOUS.

45. APPEALS.

(1) A person aggrieved by a decision of the Registrar under this Act may appeal to the Minister.

(2) On an appeal under Subsection (1), the Minister has and may exercise all the powers and functions of the Registrar under this Act, and shall–

- (a) uphold the appeal; or
- (b) reject the appeal; or
- (c) refer the matter back to the Registrar for reconsideration, with such comments or directions as the Minister thinks appropriate,

and for that purpose may–

- (d) call for further information or for further comments from–
 - (i) the group concerned or any of its members; or
 - (ii) the dispute-settlement authority; or
- (e) direct the Registrar to make a further report on the circumstances.

(3) The decision of the Minister is final, except that if the matter is referred back to the Registrar under Subsection (2)(c) the provisions of this section again apply to the decision of the Registrar on the reconsideration.

46. SERVICE.

(1) A document or thing required to be served on or given to a business group may be served or given–

- (a) on or to a member of the committee or other controlling body of the group provided for under Section 14(1)(c); or
- (b) by leaving it with some person apparently over the age of 18 years at the address given in accordance with Section 14(1)(j); or
- (c) by pre-paid post addressed to the postal address of the group last known to the Registrar.

(2) Where a document or thing is served in accordance with Subsection (1)(c), it shall be deemed to have been served on the business group if, after seven days after it has been posted, the document or thing has not been returned undelivered to the sender in the ordinary course of the mail.

47. PROCEDURES OF DISPUTE-SETTLEMENT AUTHORITIES, ETC.

The procedures under this Act of a dispute-settlement authority, a Village Court, a customary authority or the committee or other controlling body of a business group are as decided by it, having regard to any relevant custom.

48. LIABILITY OF REGISTRAR AND DISPUTE-SETTLEMENT AUTHORITY.

The Registrar, a Deputy Registrar, a delegate of the Registrar or the dispute-settlement authority is not liable for anything done in good faith and without negligence under or for the purposes of this Act.

49. LIABILITY OF MEMBERS OF COMMITTEE.

²³Where a business group or a committee of a business group contravenes or fails to comply with a provision of this Act, each of the members of the committee of the group in office at the time of the contravention or failure shall be deemed to have contravened or failed to comply with the provision and is punishable accordingly, and where no other penalty is provided is liable to a fine not exceeding K2,000.00.

50²⁴. [REPEALED.]**51. REGULATIONS.**

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

Office of Legislative Counsel, PNG

²³ Section 49 amended by *Business Groups Incorporation (Amendment) Act* 1994 (No. 14 of 1994), s11.

²⁴ Section 50 repealed by *Business Groups Incorporation (Amendment) Act* 1994 (No. 14 of 1994), s12.