

Chapter 132.
Loans and Assistance (International Agencies) Act 1971.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 132.

Loans and Assistance (International Agencies) Act 1971.

ARRANGEMENT OF SECTIONS.

PART I – PRELIMINARY.

1. Interpretation.
 - “assistance agreement”
 - “financial assistance agreement”
 - “international assistance agency”
 - “international finance agency”
 - “loan”
 - “loan agreement”
 - “technical assistance agreement”

PART II – LOAN AGREEMENTS.

2. Borrowing from international assistance agencies or international finance agencies.
3. Issue of instruments under loan agreements.
4. Charges having priority.
 - “charge”
 - “external debt”
5. Moneys for repayment of loans.

PART III – ASSISTANCE AGREEMENTS.

6. Technical assistance from international assistance or international finance agencies.
- 6A. Financial assistance from international assistance or international finance agencies.
- 6B. Moneys payable by the State.

PART IV – MISCELLANEOUS.

7. Effect of agreements.
8. Exemptions from taxation, etc.
9. Arbitration.
10. Operation of certain Acts.

- 10A. National Authorizing Officer.
- 10B. Agreements relating to proceeds of loans or grants.
- 11. Regulations.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Loans and Assistance (International Agencies) Act 1971,

¹Being an Act to provide for the raising of loans and the obtaining of technical and financial assistance by the State from certain international organizations and agencies and for related purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

²(1) In this Act—

“**assistance agreement**” means a technical assistance agreement or a financial assistance agreement;

“**financial assistance agreement**” means an agreement of a kind referred to in Section 6A;

“**international assistance agency**” means—

- (a) the International Bank for Reconstruction and Development; or
- (b) the International Development Association; or
- (c) the Asian Development Bank; or
- (d) the United Nations; or
- (e) the South Pacific Commission; or
- (f) the European Economic Community; or
- (g) the European Investment Bank; or
- (h) the Kuwait Fund for Arab Economic Development; or

¹ Long title replaced by No. 71 of 1978, Schedule.

² Section 1 amended by No. 26 of 1978, s1 and 71 of 1978, Schedule.

- (i) any other prescribed organization or agency;

“international finance agency” means—

- (a) the International Bank for Reconstruction and Development; or
- (b) the International Development Association; or
- (c) the Asian Development Bank; or
- (d) the European Economic Community; or
- (e) the European Investment Bank; or
- (f) the Kuwait Fund for Arab Economic Development; or
- (g) any other prescribed organization or agency; and

“loan” includes a credit;

“loan agreement” means an agreement of a kind referred to in Section 2(1), whether known as a loan agreement or a credit agreement or otherwise;

“technical assistance agreement” means an agreement of a kind referred to in Section 6, but does not include a loan agreement.

(2) A reference in this Act to a loan agreement shall be read as including a reference to any bond, promissory note or other instrument issued under Section 3 for the purpose of giving effect to the terms of the agreement, and a reference to the principal of, or interest or other charges on, a loan shall be read as including a reference to any amount payable under any such bond, promissory note or instrument.

(3) For the purpose of this Act, an organization or agency is not precluded from being international in nature by reason only that its existence is based solely on the municipal law of a foreign country.

PART II. – LOAN AGREEMENTS.

2. BORROWING FROM INTERNATIONAL ASSISTANCE AGENCIES OR INTERNATIONAL FINANCE AGENCIES.

³(1) Where—

- (a) the National Executive Council approves the principal terms and conditions of a borrowing from an international assistance agency or international finance agency; and
- (b) the borrowing is—
 - (i) for the purpose of financing a programme or project already approved by the National Executive Council and the Parliament within the framework of the Government's Budget and Public Investment Programmes; or
 - (ii) for purposes otherwise approved by the National Executive Council,

the State may—

- (c) agree with the agency to borrow in such manner and on such terms as are consistent with that approval; and
- (d) borrow in accordance with that agreement.

(2) An approval under Subsection (1)(a) shall specify—

- (a) as regards the source of the borrowing—that the funds shall be borrowed from a specified international finance agency or specified international assistance agency or from international finance agencies or international assistance agencies generally; and
- (b) as regards the amount of the borrowing—that the funds shall not exceed a specified sum (which may be expressed in a foreign currency).

(3) Where a loan agreement is entered into for a purpose included in or ancillary to the purpose approved under Subsection (1)(b) the agreement shall be deemed to be consistent with the approval.

(4) Subject to Subsection (5), a sum borrowed under Subsection (1) shall be applied only in accordance with the loan agreement.

(5) Where a loan agreement is modified in a manner which is—

- (a) consistent with the approval under Subsection (1)(a); and
- (b) agreed between the Minister and the international assistance agency or international finance agency concerned,

³ Section 2 replaced by No. 26 of 1978, s2; repealed and replaced by *Loans and Assistance (International Agencies) (Amendment) Act 1990* (No. 43 of 1990), s1.

a sum borrowed under Subsection (1) may be applied in accordance with the agreement as so modified.

(6) A loan agreement shall be made in the name of the State and shall be entered into and executed on behalf of the State by the Minister.

(7) As soon as practicable after the execution of a loan agreement under Subsection (6), the Minister shall table a copy of the loan agreement in the Parliament and shall inform the Parliament of the amount, purposes and sources of the borrowing and of the terms and conditions of the loan agreement.

(8) This section or a loan agreement does not constitute an appropriation of the proceeds of a loan.

3. ISSUE OF INSTRUMENTS UNDER LOAN AGREEMENTS.

(1)⁴ ⁵Notwithstanding any other law, the Minister may, on behalf of the State, issue such bonds, promissory notes and other instruments, and on such terms and conditions, as are necessary or convenient for the purpose of giving effect to the terms of a loan agreement.

(2) A bond, promissory note or instrument issued under Subsection (1) shall be executed on behalf of the State by the Minister or a person authorized by the Minister for the purpose.

4. CHARGES HAVING PRIORITY.

(1) In this section—

“**charge**” includes a mortgage, lien, pledge or priority of any kind;

“**external debt**” means a debt payable in any medium other than a currency that at the time in question is legal tender for the repayment of public and private debts in the country, whether any such debt is payable absolutely or at the option of the creditor in that other medium.

(2)⁶ ⁷The State shall not, except as otherwise agreed by the Minister and the international finance agency concerned, create any charge on any of its assets as security for any external debt unless it is expressly provided that the charge will equally and rateably secure the repayment of the principal of, and interest and other charges on, any loan made by an international finance agency to the State under a loan agreement subsisting at the time of the creation of the charge.

⁴ Section 3(1) replaced by No. 26 of 1978, s3.

⁵ Section 3(1) replaced by No. 26 of 1978, s3.

⁶ Section 4(2) replaced by No. 26 of 1978, s4.

⁷ Section 4(2) replaced by No. 26 of 1978, s4.

5. MONEYS FOR REPAYMENT OF LOANS.

⁸All payments of principal and interest and other charges payable by the State under a loan agreement shall be made out of the Consolidated Revenue Fund.

⁸ Section 5 amended by No. 71 of 1978, Schedule; repealed and replaced by *Appropriation (Administrative Arrangements) Act 1996* (No. 37 of 1996), s11.

PART III.⁹ – ASSISTANCE AGREEMENTS.**6. TECHNICAL ASSISTANCE FROM INTERNATIONAL ASSISTANCE OR INTERNATIONAL FINANCE AGENCIES.**

¹⁰(1) Where the purpose of the technical assistance is–

- (a) in furtherance or implementation of a programme or project already approved by the National Executive Council and the Parliament within the framework of the Government's Budget and Public Investment Programme; or
- (b) otherwise approved by the National Executive Council,

and in its opinion it is necessary or desirable in the interests of Papua New Guinea to do so–

- (c) the Minister; or
- (d) a Minister empowered under Subsection (2),

may, on behalf of the State, enter into and execute an agreement with an international assistance or international finance agency for the supply of technical assistance to the State.

(2) For the purposes of this Act–

- (a) the Minister responsible for financial matters is empowered; and
- (b) the Minister responsible for foreign affairs matters is empowered,

to enter into agreements under Subsection (1) where the consideration to be paid or given to the State does not exceed K3,000,000.00.

6A. FINANCIAL ASSISTANCE FROM INTERNATIONAL ASSISTANCE OR INTERNATIONAL FINANCE AGENCIES.

¹¹(1) Where the purpose of the financial assistance is–

- (a) in furtherance or implementation of a programme or project already approved by the National Executive Council and the Parliament within the framework of the Government's Budget and Public Investment Programme; or
- (b) otherwise approved by the National Executive Council,

and in his opinion it is necessary or desirable in the interests of Papua New Guinea to do so–

- (c) the Minister; or

⁹ Part III: Heading amended by No. 71 of 1978, Schedule.

¹⁰ Section 6 replaced by No. 26 of 1978, s5; amended by 71 of 1978, Schedule; repealed and replaced by *Loans and Assistance (International Agencies) (Amendment) Act 1990* (No. 43 of 1990), s2.

¹¹ Section 6A added by No. 71 of 1978, s1; repealed and replaced by *Loans and Assistance (International Agencies) (Amendment) Act 1990* (No. 43 of 1990), s3.

(d) a Minister empowered under Subsection (2), may, on behalf of the State, enter into and execute an agreement with an international assistance or international finance agency for the supply of financial assistance to the State.

(2) For the purposes of this Act—

(a) the Minister responsible for financial matters is empowered; and

(b) the Minister responsible for foreign affairs matters is empowered,

to enter into agreements under Subsection (1) where the consideration to be paid or given to the State does not exceed K3,000,000.00.

6B. MONEYS PAYABLE BY THE STATE.

¹²All charges payable by the State under a financial assistance agreement shall be paid out of the Consolidated Revenue Fund.

¹² Section 6B added by No. 71 of 1978, s1; repealed and replaced by *Loans and Assistance (International Agencies) (Amendment) Act 1990* (No. 43 of 1990), s12.

PART IV. – MISCELLANEOUS.**7. EFFECT OF AGREEMENTS.**

(1)¹³ ¹⁴A loan agreement or assistance agreement entered into under this Act has the force of law as if contained in this Act, and applies notwithstanding anything in any other law.

(2)¹⁵ ¹⁶The operation of Subsection (1) is not affected by reason only that the agreement is expressed in a foreign language.

8. EXEMPTIONS FROM TAXATION, ETC.

¹⁷Notwithstanding anything in any other law, where a loan agreement or assistance agreement provides that any person, income, matter or thing is exempt, wholly or partly, and absolutely or conditionally, from any rate, charge, tax, duty, levy, fee or imposition under any law, the person, income, matter or thing is exempt accordingly.

9. ARBITRATION.

(1)¹⁸ ¹⁹Subject to the terms and conditions of the relevant loan agreement or assistance agreement, if any dispute between the State and an international finance agency or technical assistance agency arises under any loan agreement or assistance agreement, it shall be determined by arbitration as agreed between the parties.

(2) Any award made in any such arbitration may be enforced as if it had been validly made under the *Arbitration Act 1951*.

10. OPERATION OF CERTAIN ACTS.

(1) The *Loan Securities Act 1960* does not apply to or affect this Act or any agreement entered into under this Act.

(2)²⁰ ²¹The *Public Finances (Management) Act 1995* does not apply to or in respect of a loan agreement or assistance agreement made under this Act.

10A. NATIONAL AUTHORIZING OFFICER.

²²(1) The Head of State, acting on advice, may, by notice in the National Gazette, appoint a person to be the National Authorizing Officer in relation to a loan agreement or assistance agreement.

¹³ Section 7(1) amended by No. 71 of 1978, Schedule.

¹⁴ Section 7(1) amended by No. 71 of 1978, Schedule.

¹⁵ Section 7(2) added by No. 26 of 1978, s5.

¹⁶ Section 7(2) added by No. 26 of 1978, s5.

¹⁷ Section 8 amended by No. 71 of 1978, Schedule.

¹⁸ Section 9(1) amended by No. 71 of 1978, Schedule.

¹⁹ Section 9(1) amended by No. 71 of 1978, Schedule.

²⁰ Section 10(2) amended by No. 71 of 1978, Schedule.

²¹ Section 10(2) amended by No. 71 of 1978, Schedule.

(2) A National Authorizing Officer has such powers and functions as are conferred on him under the agreement.

(3) The reference in Subsection (1)–

(a) to a loan agreement, includes a proposed loan agreement; and

(b) to an assistance agreement, includes a proposed assistance agreement.

10B. AGREEMENTS RELATING TO PROCEEDS OF LOANS OR GRANTS.

²³Notwithstanding anything in the *Public Finances (Management) Act 1995*, the Minister may, on behalf of the State, enter into and execute an agreement with–

(a) a statutory corporation of a public nature; or

(b) a prescribed person or body (whether or not the body is a corporation),

in relation to the proceeds, or any part of the proceeds, of a loan or grant the subject of an agreement under this Act.

11. REGULATIONS.

²⁴The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for declaring organizations and agencies to be international assistance agencies or international finance agencies within the meaning of this Act.

Note No. 26 of 1978, Section 10 provides–

A loan agreement, or a borrowing under a loan agreement, shall not be invalid or liable to be challenged or called into question by reason only that the resolution under which the agreement and borrowing is made or purportedly made is expressed to authorize the Governor-General or the Head of State to borrow from an international finance agency, and such an agreement or borrowing shall be as valid and effectual as if the resolution was expressed to authorize the Minister for Finance to borrow from an international finance agency.

In subsection (1), ‘**resolution**’ means a resolution of the House of Assembly before Independence or a resolution of the National Parliament after Independence.”.

Office of Legislative Counsel, PNG

²² Section 10A added by No. 71 of 1978, s2.

²³ Section 10B added by No. 71 of 1978, s2.

²⁴ Section 11 replaced by No. 26 of 1978, s7.