

Chapter 147.  
***Land Groups Incorporation Act 1974.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 147.

***Land Groups Incorporation Act 1974.***

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

*Land Groups Incorporation Act 1974,*

Being an Act—

- (a) to recognize the corporate nature of customary groups; and
- (b) to allow them to hold, manage and deal with land in their customary names,

and for related purposes.

**PART I. – INTRODUCTORY.**

**1. PURPOSES OF THIS ACT.**

The purposes of this Act are to encourage—

- (a) greater participation by local people in the national economy by the use of the land; and
- (b) better use of such land; and
- (c) greater certainty of title; and
- (d) the better and more effectual settlement of certain disputes,

by—

- (e) the legal recognition of the corporate status of certain customary and similar groups, and the conferring on them, as corporations, of power to acquire, hold, dispose of and manage land, and of ancillary powers; and
- (f) the encouragement of the self-resolution of disputes within such groups.

**2. INTERPRETATION.**

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

**“certificate of recognition”** means a certificate of recognition issued under Section 5 or 9(1)(c);

**“the constitution”**, in relation to an incorporated land group, means the constitution of the group as set out in the certificate of recognition;

**“dispute-settlement authority”** means a dispute-settlement authority provided for in accordance with Section 8(1)(g);

**“the dispute-settlement authority”**, in relation to an incorporated land group, means the dispute-settlement authority for the group;

**“incorporated land group”** means a group that for the time being is recognized under Part III.;

**“register of incorporated land groups”** means a register kept under Section 7;

**“the Registrar”** means the Registrar of Incorporated Land Groups appointed under Section 3;

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

**“relevant custom”**, in relation to an incorporated land group—

- (a) means any custom that is binding on the group or on all the members of the group; and
- (b) includes any custom that is referred to in the constitution in accordance with Section 8(1)(f);

**“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 an incorporated land group shall be read—

- (a) in any case where the Registrar, after due inquiry and consultation with members of the incorporated land group, 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 be 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 members; and
- (b) if there are more dispute-settlement authorities than one—such one (if any) of them as the Registrar determines, after due inquiry and consultation with members of the group.

(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.

**PART II. – ADMINISTRATION.**

**3. APPOINTMENT OF REGISTRAR.**

The Minister may, by notice in the National Gazette, appoint an officer to be the Registrar of Incorporated Land Groups.

**4. DELEGATION.**

With the approval of the Minister, the Registrar may, by instrument, delegate to a person all or any of his powers or functions under this Act (except this power of delegation).



**PART III. – RECOGNITION OF CUSTOMARY CORPORATIONS, ETC.**

***Division 1.***

***Recognition Generally.***

**5. MANNER OF RECOGNITION.**

(1) Subject to Section 6, on application by or on behalf of the group the Registrar may recognize a customary group of persons as an incorporated land group, by issuing to it a certificate of recognition.

(2) The application shall–

(a) be in the prescribed form; and

(b) be accompanied by a copy of the proposed constitution,

and the applicants shall, if so required by the Registrar, supply–

(c) a list of all members of the group; and

(d) such further information as the Registrar requires.

(3) Recognition shall not be refused to a group simply because–

(a) the members are part only of a customary group or are members of another incorporated land 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 group is made up of members of various customary groups, if the Registrar is satisfied that the group possesses common interests and coherence independently of the proposed recognition, and share or are prepared to share common customs,

or a combination of those circumstances.

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

(5) Notwithstanding the preceding provisions of this section, the Registrar may recognise as an incorporated land group a group consisting only of incorporated land groups if he is satisfied that–

(a) the member groups possess common interests and coherence independently of the proposed recognition, and share or are prepared to share common customs; and

(b) the association between the groups represents a customary form of organization.

(6) The Registrar may refuse recognition if he is satisfied that–

- (a) the group is not a customary land-owning group and has no real connection with such a group; or
- (b) no purpose of this Act is likely to be served to a significant extent by recognition; or
- (c) recognition is sought basically for a purpose not related to the purposes of this Act; or
- (d) some other form of incorporation or of organization under some other Act would be more appropriate and effective.

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

(8) The name of an incorporated land group shall end with the words “Land Group (Incorporated)” or “Land Group (Inc.)”.

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

(10) A certificate of recognition shall set out the constitution of the group.

## **6. NOTICE OF APPLICATION FOR RECOGNITION.**

(1) Before recognizing a group, the Registrar shall—

- (a) give and promulgate the appropriate notice in accordance with Section 33; and
- (b) call for and consider comments from any Local-level Government or Village Court to which notices are to be given under Section 33(1)(i) and (j), and from the proposed dispute-settlement authority; and
- (c) consider any comments made by any person referred to in Section 33(2),

and may call for and consider any other information that he thinks relevant.

(2) The comments referred to in Subsection (1)(b) and (c) include comments on—

- (a) any relevant matter referred to in Section 5(3), (4), (5) or (6); 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 recognition be,

and, in the case of the proposed dispute-settlement authority, whether he is willing and able to act.

**7. REGISTER OF INCORPORATED LAND 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 incorporated land groups.

(2) The register or registers shall contain—

- (a) copies of all applications for recognition; and
- (b) copies of all certificates of recognition issued under Section 5; and
- (c) copies of all certificates of recognition issued under Section 9(1)(c); and
- (d) all certificates given under Section 9(2); and
- (e) all comments received under Section 6 or 9; and
- (f) all orders made under Section 15 or 18; and
- (g) the records of any appeal under Section 26; and
- (h) copies of any accounts and records directed to be kept in the register or registers under Section 27(3)(c); and
- (i) a record of any information supplied under Section 5(2) or 28; and
- (j) copies of all statements by the Registrar under Section 5(9) or 9(3); and
- (k) all notices given under Section 33(1); and
- (l) all copies of accounts and records forwarded to the Registrar under Section Sch. 1.7(1); and
- (m) such other matters as are prescribed.

(3) The production of a register or document purporting to be, or to be a copy of or extract from, a register of incorporated land groups is *prima facie* evidence of the matters contained in it.

(4) The part of a register dealing with an incorporated land group or a group the recognition 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.***

**8. CONTENTS OF CONSTITUTION.**

(1) In addition to any other matter required by this Act, the constitution of an incorporated land group as set out in the certificate of recognition must set out—

- (a) the name of the group; and
- (b) the qualifications for (and disqualifications, if any, from) 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) the manner in which the group acts, and the manner in which its acts are evidenced; and
- (e) any limitations and conditions of the exercise of the powers conferred by this Act on the group; and
- (f) the name of, or other means of identification of, any custom in accordance with, or subject to which, the group is to act; and
- (g) details, as required by Section 21, of the proposed dispute-settlement authority and the rules (if any) applicable to it; and
- (h) an address for service; and
- (i) any rules, not inconsistent with this Act, applicable to the conduct of the affairs of the group; and
- (j) any other matters that the group, with the approval of the Registrar, desires to have included in the constitution; and
- (k) any other prescribed matters.

(2) As in favour of a person who has entered into a transaction (other than a transaction disposing of land) with a recognized group without any reason to believe that the group did not have power to enter into the transaction, the fact that the transaction—

- (a) was entered into in accordance with Subsection (1)(d); and
- (b) was not apparently otherwise in conflict with anything stated in the constitution,

is conclusive as to the power of the group to enter into the transaction.

## **9. VARIATION.**

(1) On application by an incorporated land group, the Registrar may—

- (a) vary the constitution of the group; and
- (b) cause the relevant register of incorporated land groups to be amended accordingly; and
- (c) recall the certificate of recognition and issue an amended certificate.

(2) Unless he certifies that a variation applied for is of no practical or legal significance, the Registrar shall, before taking action under Subsection (1)—

- (a) take the appropriate action under Section 33; and
- (b) call for and consider comments on the proposed variation from any Local-level Government or Village Court to which notices are to be given under Section 33(1)(i) and (j), and from the proposed dispute-settlement authority; and

(c) consider any comment made by any person referred to in Section 33(2).

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

**10. PROOF OF CONSTITUTION, ETC.**

(1) A document purporting to be—

(a) the certificate of recognition of an incorporated land group; and

(b) signed 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 of the Registrar or a person authorized by the Registrar—

(a) that at a certain time the constitution of an incorporated land group did or did not contain a certain provision; or

(b) setting out the constitution of an incorporated land group as at a certain time,

is conclusive evidence of the facts certified.

***Division 3.***

***Effect of Recognition.***

**11. STATUS OF RECOGNIZED GROUPS.**

(1) An incorporated land group—

(a) is a corporation; and

(b) has perpetual succession; and

(c) may sue and be sued in its corporate name as set out in its constitution; 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) For the purposes of any law (other than the *Mining Act 1992*), an incorporated land 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 an incorporated land group liable in any criminal proceedings in which, apart from the operation of this section, it would not be liable.

**12. TRANSFER OF ASSETS AND LIABILITIES.**

(1) For the purposes of Subsection (2), “the rights and liabilities of a customary group” means the rights and liabilities of the members of the group which they collectively held, or for which they were collectively liable, immediately before the group was recognized under this Act.

(2) Where a customary group is recognized under this Act, the rights and liabilities of the group become, on the recognition of the group, rights and liabilities of the group as incorporated, and in its corporate name, under this Act.

(3) Subsection (2) does not affect rights and liabilities of a person who is not a member of the group, except that they may be enforced against or in favour of the group as incorporated, and in its corporate name, under this Act.

**13. POWERS OF INCORPORATED LAND GROUPS.**

(1) The powers of an incorporated land group—

- (a) relate only to land and its use and management, and to associated matters; and
- (b) shall be regulated and exercised in accordance with, and subject to any conditions or limitations imposed by, its constitution and any relevant custom; and
- (c) shall be exercised in the manner specified by its constitution or any relevant custom, or otherwise by law.

(2) Subject to Subsections (1) and (3), an incorporated land group may—

- (a) acquire, hold and dispose of customary land and rights in or in respect of customary land, in the manner (if any) and to the extent (if any) allowed by custom; and
- (b) acquire, hold and dispose of other land and rights in or in respect of other land; and
- (c) use and manage the land, or enter into agreements for the use or management of it; and
- (d) borrow money or accept property on credit for the purposes of the preceding provisions of this subsection; and
- (e) distribute any product of the land or any profits arising out of the use or management of it,

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

(3) No right or interest in or in relation to land that is given by an incorporated land group to a person who is a member of the group is registrable under any law relating to the registration of land or of interests in land.

**14. FORMALITIES OF GROUP ACTION.**

(1) Notwithstanding any other law prescribing the manner in which a corporation must act, it is sufficient in point of form if an incorporated land group acts—

(a) in accordance with a provision of its constitution to which Section 8(d) applies; or

(b) by an agent authorized for the purpose.

(2) The *Frauds and Limitations Act 1988* does not apply to or in relation to—

(a) an agreement under Section 13(2)(c); or

(b) an agreement between an incorporated land group and any of its members.

***Division 4.***

***Winding-up.***

**15. MANNER OF WINDING-UP.**

(1) On receipt of—

(a) a request by an incorporated land group; or

(b) 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 23,

that an incorporated land group or the affairs of an incorporated land group is or are in such a condition that its continued recognition 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) an incorporated land group has ceased to act as such; or

(b) the circumstances of or circumstances affecting an incorporated land group have become such that, if the group were applying for recognition under Section 5, he would refuse recognition; or

(c) an incorporated land group is unable, and is unlikely within a reasonable time to become able, to pay its debts; or

(d) the affairs or activities of an incorporated land group, or of the dispute-settlement authority of an incorporated land group, are so conducted as to be oppressive or unfair to any of the members; or

(e) 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) No act or omission that is in accordance with any relevant custom of itself constitutes a ground for winding-up under Subsection (2)(d) or (e).

(4) 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.

(5) The winding-up of the affairs of the group shall be carried out—

(a) subject to Paragraph (b)—by the dispute-settlement authority; or

(b) at the request of the group or of the dispute-settlement authority, or if the affairs of the group are being wound up under Subsection (2)(d)—by the Registrar,

in such manner as, subject to this Act, the Registrar directs.

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

(7) Where an order is made under Subsection (1), 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.

## **16. PAYMENT OF DEBTS.**

In a winding-up, the provisions of Schedule 1 apply.

## **17. LIABILITY OF MEMBERS.**

Unless the constitution or any relevant custom provides otherwise, the liability of a member of an incorporated land 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.

## **18. DISTRIBUTION OF SURPLUS PROPERTY AND DISSOLUTION.**

When the affairs of an incorporated land group have been wound up, the Registrar shall, by written order in the prescribed form, dissolve the group and vest any property (other than customary land) remaining after payment or settlement of all known debts—

(a) as provided in the constitution; or



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

**19. VESTING OF CUSTOMARY LAND.**

Subject to any other law regulating the matter, on the dissolution of an incorporated land group under this Act any customary land owned by the group reverts to the persons who would be the customary owners if the group had never been recognized under this Act.

**PART IV. – DISPUTE SETTLEMENT.**

**20. APPLICATION AND INTERPRETATION OF PART IV.**

(1) This Part applies to disputes between–

(a) an incorporated land group and a member of the group; or

(b) members of an incorporated land 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, an incorporated land group.

(3) In this Part, a reference to a party to, 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.

**21. DISPUTE-SETTLEMENT AUTHORITIES.**

(1) In order to be recognized under this Act, each 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, or a combination of any such persons.

(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.

**22. SETTLEMENT OF DISPUTES.**

All disputes to which this Part applies shall be dealt with, in accordance with Sections 23 and 24, by the dispute-settlement authority or a court having jurisdiction under Section 23.

**23. 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 incorporated land group concerned so provides; or
- (c) any relevant agreement between the 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) 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) subject to Subsection (4), the court must be a Village Court or a District Court that has, apart from the effect of this Part, 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) its advice shall be given in open court and is open to challenge; and
  - (ii) if for good reason the court thinks it proper to do otherwise, the court is not bound to accept the advice.

(4) For the purposes of Subsection (3)(a), each Village Court and each District Court has jurisdiction over disputes as to land (other than disputes as to registered interests in land).

#### **24. LAW TO BE APPLIED.**

A dispute-settlement authority or a court dealing, under Section 23, 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 proper; and
- (c) shall not make a decision about any matter without calling for argument 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 and any relevant custom.

**25. APPEAL AND REVIEW UNDER PART IV.**

(1) Subject to this section, no proceedings or decision under this Part, whether before or by a dispute-settlement authority or by a court, are or is subject to appeal or review in any way.

(2) A person aggrieved by a decision of a dispute-settlement authority or a court under this Part may require that the decision be reviewed and, if necessary, the matter be reopened 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 21(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 Subsection (4), 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 V. – MISCELLANEOUS.**

**26. APPEALS TO MINISTER.**

(1) A person aggrieved by a decision of the Registrar under this Act (other than a decision under Section Sch. 1.9(1)) 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
  - (iii) a Local-level Government or Village Court to which a notice should be given under Section 33(1); or
  - (iv) any person referred to in Section 33(2); or
- (e) direct the Registrar to make a further report on the matter,

or both.

(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.

**27. SUPERVISORY POWERS, ETC.**

(1) The Registrar or the dispute-settlement authority may call, in such manner as he thinks proper, a meeting of–

- (a) members of an incorporated land group; or
- (b) the committee or other controlling body of an incorporated land group.

(2) The dispute-settlement authority may direct that accounts and records of some or all of the affairs of an incorporated land group be kept in such manner as it thinks proper.

(3) Where the dispute-settlement authority gives a direction under Subsection (2)–

- (a) it shall advise the Registrar of the direction; and
- (b) the dispute-settlement authority, the Registrar and any member of the group is entitled at all times to inspect the accounts and records; and

- (c) the Registrar may direct that copies of the accounts and records be given to him to be kept in the register of incorporated land groups.

## **28. REQUIREMENT OF INFORMATION.**

The Registrar may at any time require an incorporated land group or the dispute-settlement authority of an incorporated land group to supply him with such information concerning the operations or membership of the group as he reasonably requires.

## **29. FALSE STATEMENTS.**

A person who wilfully makes to the Registrar or the Minister a statement for any purpose of or related to this Act that is false or misleading in a material particular is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months.

## **30. SERVICE.**

A document or thing required to be served on or given to an incorporated land 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 8(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 8(1)(h).

## **31. PROCEDURES OF DISPUTE-SETTLEMENT AUTHORITIES, ETC.**

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

## **32. LIABILITY OF REGISTRAR AND DISPUTE-SETTLEMENT AUTHORITIES, ETC.**

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

## **33. PUBLICATION OF CERTAIN MATTERS.**

- (1) The Registrar shall cause notice of—
  - (a) all applications for recognition under Section 5; and
  - (b) all grants of certificates of recognition under Section 5; and

- (c) all applications for the variation of certificates of recognition under Section 9; and
- (d) all variations of certificates of recognition under Section 9; and
- (e) all orders for winding-up under Section 15; and
- (f) all vesting orders under Section 18; and
- (g) all orders for dissolution under Section 18,

to be—

- (h) published in the National Gazette; and
- (i) given to any Local-level Government in whose area—
  - (i) the group or any of the property of the group; or
  - (ii) any property that is proposed to become property of the group by virtue of the recognition,  
is situated; and
- (j) given to any Village Court within whose jurisdiction the group is, or will on recognition come.

(2) In addition, the Registrar shall publicly promulgate notice of a matter referred to in Subsection (1)—

- (a) in such manner as he thinks most likely to ensure that it is generally known to persons having—
  - (i) a knowledge of or an interest in the affairs of the group or of the members of the group; or
  - (ii) a knowledge of the relationship between the group or members of the group and other persons and customary groups; and
- (b) in such other manner as is directed by the Minister.

#### **34. LEGAL REPRESENTATION.**

Except in proceedings under Section Sch. 1.9(1), legal representation shall not be allowed in any proceedings under this Act.

#### **35. 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.

**SCHEDULE 1 – PROVISIONS RELATING TO WINDING-UP.**

Sec. 16.

**Sch. 1.1. “Debt”.**

In this Schedule, “**debt**” includes interest due on the debt to the date of discharge if the payment of interest was a condition of the payment of the debt, but not otherwise.

**Sch. 1.2. “Profits”.**

For the purposes of this Schedule, “**profits**” means profits before tax, and in the calculation of profits–

- (a) no account shall be taken of normal depreciation or wear and tear of any property of the group or a member of the group; and
- (b) the amount of the profit shall be deemed to be increased by the amount or value of any damage to or loss of any property of the group or a member of the group caused by the wilful or negligent act or omission of the creditors or any of them, or of an agent or servant of the creditors or any of them, and shall be credited to the group accordingly.

**Sch. 1.3. Priorities, etc.**

Subject to Section 8(3)(d) of the *Land Redistribution Act*, in a winding-up the following rules apply:–

- (a) no person is entitled to demand or order that any customary land, or any right or interest in or in relation to any customary land, be sold or otherwise disposed of except as provided by this Schedule; and
- (b) all creditors who are not members of the group being wound up shall be paid in priority to creditors who are members of the group; and
- (c) a secured creditor (other than a member of the group) has to the extent of the debt secured first priority; and
- (d) any costs of or incidental to the winding-up have second priority; and
- (e) all amounts–
  - (i) of rates that–
    - (A) are, or are of the nature of, local government rates; and
    - (B) became due and payable by the group not more than 12 months before the date of commencement of the winding-up; and
    - (C) were due and payable by the group immediately before that date; and
  - (ii) of assessed income tax that–



- (A) was assessed under any Act before the date of commencement of the winding-up; and
- (B) was due and payable by the group immediately before that date,  
not exceeding in the whole one year's assessment; and
- (iii) due and payable—
  - (A) by way of the repayment of any advance made to the group;  
or
  - (B) in payment of any amount owing by the 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 the aid, development or encouragement of mining,  
have third priority; and
- (f) subject to any other law relating to priorities of securities, where there are two or more securities over the same property they have priority in the order in which they were given; and
- (g) creditors of each of the following classes of creditors rank equally as between themselves:—
  - (i) unsecured creditors (other than members of the group); and
  - (ii) subject to Paragraph (f), secured creditors holding securities over the same property; and
- (h) as between creditors who are members of the group, Paragraphs (d), (e), (f) and (g), with the necessary modifications, apply.

**Sch. 1.4.Special priorities in respect of wages, etc.**

Where he is of the opinion that undue hardship would otherwise be caused to any person, the Registrar may direct that such priority as seems to him appropriate be given to the whole or any part of any debt due to an employee or former employee of the group in respect of wages, allowances, accrued leave or workers' compensation.

**Sch. 1.5.Availability of customary land to creditors.**

(1) If, on the winding-up, the assets (other than customary land) of the group are not sufficient to pay the debts of the group, the unpaid creditors are entitled, subject to the succeeding provisions of this Schedule—

- (a) to enter on, take possession of and use and manage any customary land the property of the group; and
- (b) to retain the profits in discharge of the debts.

(2) The creditors may remain in possession only—

- (a) for five years; or
- (b) until the amount of the debts is paid off out of the profits or otherwise,

whichever first occurs.

(3) This section—

- (a) does not apply in respect of a dwelling-house or any land used for the purposes of the dwelling-house; and
- (b) applies only in relation to so much of the land as, taking into account any other property of the group and its members, is surplus to the reasonable requirements of the members of the group and their families for subsistence.

(4) In the event of a dispute that cannot be settled by agreement between the group or members of the group and the creditors as to the amount or the part of the land that is to be exempt, under Subsection (3), from possession by the creditors, the matter shall be referred to arbitration under the *Arbitration Act 1951*.

(5) The rights of the creditors as between themselves are, subject to subsection (3), as agreed between them, and in default of agreement the matter shall be referred to arbitration under the *Arbitration Act 1951*.

(6) The only improvements that may be removed from the land by the creditors at the end of the period of possession are—

- (a) improvements that may be removed, and are removed, from the land without—
  - (i) material damage to the land or anything on or in it; or
  - (ii) damage that would diminish its value (apart from any value attributable to the improvements removed or proposed to be removed); and
- (b) any improvements as to which it was agreed between the group and the creditors, before they were made, that they might be removed.

(7) In the use and management of the land—

- (a) no material change shall, except with the consent of the group, be made in the manner of its use; and
- (b) accepted agricultural and other practices shall be used, to the satisfaction of a person appointed by the Registrar to supervise the management; and
- (c) subject to Subsection (6), nothing shall be done that is likely to diminish the value of the land on the return of possession to the group.

#### **Sch. 1.6. Right of access.**

(1) A person referred to in Section Sch. 1.5(7)(b) is entitled at all reasonable times to full and free access to the land and to anything on the land.

(2) A person who hinders or obstructs a person appointed under Section Sch. 1.5(7)(b) in the exercise of his powers and the performance of his functions under this Act is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

**Sch. 1.7.Accounts and records as to land entered.**

(1) The creditors shall keep, to the satisfaction of the Registrar, proper accounts and records of the income from and the expenditure on the land, and shall, as and when directed by the Registrar, forward copies to him.

(2) Accounts and records referred to in Subsection (1) shall be made available for inspection at all reasonable times by—

- (a) the Registrar or a person authorized by him; or
- (b) a person authorized by the group; or
- (c) a member of the group or a person authorized by a member.

**Sch. 1.8.Offences as to land entered.**

(1) If—

- (a) the requirements of Section Sch. 1.5(7) as to the use and management of the land are not complied with; or
- (b) accounts and records are not kept or forwarded to the Registrar as required by Section Sch. 1.7(1),

any agent or employee of the creditors or any of them who is in default, and, subject to Subsection (2), the creditors, are each guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding 12 months.

(2) It is a defence to a charge against a creditor of an offence against Subsection (1) if he proves that—

- (a) he was unable to prevent the failure or non-compliance by any reasonable action that he could take; or
- (b) he did not know, and could not with the exercise of reasonable diligence have known, of the failure or non-compliance.

**Sch. 1.9.Rebate of debts on account of damage, etc.**

(1) If—

- (a) the requirements of Section Sch. 1.5(7) as to the use and management of the land are not complied with; or
- (b) accounts and records are not kept as required by Section Sch. 1.7(1),

the court that convicts a person of an offence against Section Sch. 1.8, or in any case the Registrar, may order that—

- (c) the amount of all or any debts outstanding be rebated by such amount or amounts as will recoup to the group any damage or diminution of value caused; or
- (d) if—
  - (i) the non-compliance was with intent to increase or accelerate the return from the land to the creditors, or was made with wilful or reckless disregard of the consequences; or
  - (ii) the failure was with intent to deceive any person,  
the whole or any part of the debt outstanding to any creditor in default be abated.

(2) A person aggrieved by a decision of the Registrar under Subsection (1) may appeal to a District Court.

Office of Legislative Counsel, PNG