

No. 12 of 1990.

Small Business Development Corporation Act 1990.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 12 of 1990.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Small Business Development Corporation Act 1990,

Being an Act to establish the Small Business Development Corporation, and for related purposes.

PART I. – PRELIMINARY.

1. PUBLIC INTEREST.

For the purposes of Section 42 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this law relates to a matter of national interest.

2. INTERPRETATION.

In this Act, unless the contrary appears—

“**financial institutions**” means the financial institutions declared under the *Banks and Financial Institutions Act 2000*;

“**Provincial Small Business Agencies**” means the agencies by that name established by or under a provincial law;

“**service agencies**” means profit or non-profit making enterprises that provide accounting, training, management, marketing and other related services, to small businesses;

“**small business**” means income generating enterprises—

- (a) in which the management is done wholly by citizens and generally derives from within its own working organisation; and
- (b) has a capital investment of below K100,000.00; and
- (c) retains a relatively small share of the market in which it competes;

s. 2.

Small Business Development Corporation 1990

“the Board” means the Small Business Development Corporation Board established by Section 8;

“the Corporation” means the Small Business Development Corporation established by Section 3;

“this Act” includes the regulations made under this Act.

PART II. – THE CORPORATION.

3. ESTABLISHMENT OF THE CORPORATION.

A body to be known as the Small Business Development Corporation is hereby established.

4. INCORPORATION OF THE CORPORATION.

(1) The Corporation–

- (a) is a body corporate with perpetual succession; and
- (b) shall have a common seal; and
- (c) may acquire, hold and dispose of property; and
- (d) may sue and be sued in its corporate name.

(2) All courts, Judges and persons acting judicially shall take judicial notice of the common seal of the Corporation affixed to a document and shall presume that it was duly affixed.

5. FUNCTIONS OF THE CORPORATION.

The functions of the Corporation are–

- (a) to formulate and recommend to the Minister, policies on the promotion of small business, incentive schemes and financial support; and
- (b) to provide, either by itself or in conjunction with appropriate government or private sector organisations, an advisory, management and administrative service, for the development and expansion of small business; and
- (c) to arrange and co-ordinate training programmes and skills development programmes for small business; and
- (d) to establish and maintain a small business information centre; and
- (e) to provide advice to small business, on the availability of finance and the means of obtaining financial assistance; and
- (f) to promote and co-ordinate small business and business practice and the provision of venture capital to small business; and
- (g) to carry out research and to publish and distribute information for the guidance of small business; and
- (h) to establish and maintain liaison between associates or groups of people representing small business and the government; and
- (i) to carry out such functions under any other law (including provincial law); and

- (j) generally to do such supplementary, incidental or consequential acts and things as are necessary or convenient for carrying out or giving effect to its functions.

6. POWERS OF THE CORPORATION.

The Corporation has, in addition to the powers otherwise conferred on it by this Act and any other law, power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

7. POLICY DIRECTIONS.

The Corporation and the Board shall give effect to any directions as to the policy or policies on development of small business given to the Corporation or to the Board, as the case may be, by the Minister or the National Executive Council.

PART III. – THE BOARD.

8. THE BOARD.

(1) There shall be a Small Business Development Corporation Board.

(2) The Board shall perform the functions, exercise the powers and manage the affairs of the Corporation.

9. MEMBERSHIP OF THE BOARD.

(1) The Board shall consist of–

- (a) the Departmental Head of the Department responsible for trade and industry matters or his nominee; and
- (b) the Departmental Head of the Department responsible for finance and planning matters or his nominee; and
- (c) a person representing the financial institutions; and
- (d) a person representing the service agencies; and
- (e) four persons representing the Provincial Small Business Agencies.

(2) The members referred to in Subsection (1)(c), (d) and (e)–

- (a) shall be appointed by notice in the National Gazette, by the Head of State, acting on advice, given after considering a recommendation from the Minister; and
- (b) shall be appointed for a term of two years; and
- (c) hold office on such terms and conditions as are determined under the *Boards (Fees and Allowances) Act 1955*; and
- (d) are eligible for re-appointment.

10. ALTERNATE MEMBERS.

(1) For each of the members appointed under Section 9(1)(c), (d) and (e), an alternate member shall be appointed in the same way and subject to the same conditions as the member for whom he is the alternate.

(2) In the event of the inability to act of a member, the alternate member has and may exercise all his powers, functions, duties and responsibilities and this Act applies accordingly.

(3) An alternate member may, unless the Board otherwise directs, attend all meetings of the Board but shall not, except where he is attending in the absence of the member for whom he is the alternate, take part in debate, vote on any matter or be counted towards a quorum.

11. CHAIRMAN AND DEPUTY CHAIRMAN.

(1) The Minister shall appoint a member, other than the Managing Director, to be the Chairman of the Board, and another member to be the Deputy Chairman of the Board, for such period as is determined by the Minister.

(2) The Chairman and Deputy Chairman hold office as Chairman or Deputy Chairman until the expiration of the period of their respective appointments or until they cease to be members, whichever first occurs.

12. LEAVE OF ABSENCE OF MEMBERS.

The Minister may grant leave of absence to a member on such terms and conditions as the Minister determines.

13. VACATION OF OFFICE.

(1) A member, other than an *ex officio* member, may resign his office by writing signed by him and delivered to the Minister.

(2) If a member—

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office in accordance with Subsection (1); or
- (c) is absent, except with the written consent of the Minister, from three consecutive meetings of the Board; or
- (d) fails to comply with Section 16; or
- (e) becomes bankrupt, or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (f) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer, or by death, and as a result of the conviction is sentenced to imprisonment or death,

the Minister shall terminate his appointment.

(3) The Minister, may, at any time, by written notice, advise a member that he intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour.

(4) Within 14 days of the receipt of a notice under Subsection (3), the member may reply in writing to the Minister, who shall consider the reply, and, where appropriate, terminate the appointment.

(5) Where the member referred to in Subsection (3) does not reply in accordance with Subsection (4), his appointment is terminated.

14. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.

The exercise of a power or the performance of a function of the Board is not invalidated by reason of a vacancy in the membership of the Board.

15. MEETINGS OF THE BOARD.

(1) The Board shall meet as often as the business of the Corporation requires, and at such times and places as the Chairman directs, but in any event not less frequently than once in every three months.

(2) At a meeting of the Board—

(a) four members constitute a quorum; and

(b) the Chairman, or in his absence the Deputy Chairman, shall preside, and if both the Chairman and Deputy Chairman are absent, the members present shall appoint, from among their own number, a Chairman for that meeting; and

(c) matters arising shall be decided by a majority of the votes of the members present and voting; and

(d) the person presiding has a deliberative, and in the event of an equality of votes on any matter, also a casting vote.

(3) The Board shall cause minutes of its meetings to be recorded and kept.

(4) Subject to this Act, the procedures of the Board are as determined by the Board.

16. DISCLOSURE OF INTEREST BY MEMBERS.

(1) A member who has a direct or indirect interest in a matter being considered or about to be considered by the Board, otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under Subsection (1), shall be recorded in the minutes of the Board, and the member—

(a) shall not take part, after the disclosure, in any deliberation or decision of the Board in relation to the matter; and

(b) shall be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision.

17. DELEGATION.

The Board may, by instrument, delegate to any person, all or any of its powers and functions under this Act (except this power of delegation).

18. REPORTS.

(1) The Board shall—

- (a) on 31 December in each year furnish to the Minister a report on the progress and the performance of the Corporation in relation to its functions; and
- (b) when requested by the Minister, furnish to the Minister, such other reports in relation to the functions of the Corporation.

(2) As soon as practicable after he has received the report referred to in Subsection (1)(a), the Minister shall forward the report, together with any other reports (if any) prepared and submitted under Subsection (1)(b), to the Speaker for presentation to the Parliament.

PART IV. – STAFF OF CORPORATION.

19. DIRECTOR.

(1)¹ ²There shall be a Director of the Corporation whose manner of appointment, suspension and dismissal is as specified in the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*.

(2) The Director is–

- (a) the chief executive of the Corporation; and
- (b) the head of the staff of the Corporation.

20. FUNCTIONS OF THE MANAGING DIRECTOR.

(1) The Director shall–

- (a) manage the Corporation in accordance with the policy and directions of the Board; and
- (b) advise the Board on any matter concerning the Corporation referred to him by the Board.

(2) The Director–

- (a) shall carry out and perform the duties required of him under the Act and his contract of employment; and
- (b) has such other functions as the Board, from time to time determines.

21. OFFICERS.

(1) The Director may appoint to be officers and employees of the Corporation such persons as he considers necessary for the purpose of giving effect to this Act.

(2) The Director, the officers and employees appointed under Subsection (1) constitute the staff of the Corporation.

22. CONTRACT OF EMPLOYMENT.

(1) The Director and each officer and employee of the Corporation shall be employed under, and, subject to the *Salaries and Conditions Monitoring Committee Act 1988*, hold office in accordance with the terms and conditions of, written contracts of employment.

(2) A contract of employment shall be executed by the Board and by the Director or an officer or employee.

¹ Section 19 Subsection (1) substituted by No. 97 of 2006, Sched. 1.

² Section 19 Subsection (1) substituted by No. 97 of 2006, Sched. 1.

PART V. – FINANCES ETC.

23. APPLICATION OF PUBLIC FINANCES (MANAGEMENT) ACT.

(1) Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Corporation.

(2) The Corporation is a trading enterprise for the purpose of Section 62 of the *Public Finances (Management) Act 1995*.

24. FUNDS OF THE CORPORATION.

(1) The funds of the Corporation consist of–

- (a) all monies appropriated by Act for the purpose of carrying out or giving effect to this Act; and
- (b) all monies received by the Corporation by way of grants and subscriptions; and
- (c) all monies received by the Corporation for services provided by the Corporation; and
- (d) all other monies received by the Corporation in the exercise and performance of its powers, functions and duties.

(2) The monies of the Corporation may be expended only–

- (a) in payment or discharge of expenses, obligations and liabilities of the Corporation; and
- (b) in payment of remuneration of members of the Board and staff of the Corporation; and
- (c) for such other purpose that is consistent with the functions of the Corporation and is approved by the Board.

PART VI. – MISCELLANEOUS.

25. PROTECTION FROM PERSONAL LIABILITY.

A member of the Board, staff or an agent of the Corporation is not personally liable for any act or default of himself or the Corporation done or omitted to be done in good faith in the course of the operations of the Corporation, or for the purposes of the Corporation.

26. SERVICE OF PROCESS.

Any notice, summons, writ or other process required to be served on the Corporation may be served by being left at the office of the Corporation or, in the case of a notice, by post.

27. AUTHENTICATION OF DOCUMENTS.

Any document requiring authentication by the Corporation or the Board is sufficiently authenticated without the seal of the Corporation if signed by the Chairman.

28. 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 for carrying out or giving effect to this Act, in particular for prescribing penalties of fines not exceeding K1000.00 for offences against the regulations.

Office of Legislative Counsel, PNG