

No 29 of 2009.

Land Groups Incorporation (Amendment) Act 2009.

Certified on : 24.10.11



No. of 2009.

Land Groups Incorporation (Amendment) Act 2009.

ARRANGEMENT OF SECTIONS.

1. Compliance with Constitutional Requirements.
2. Interpretation (Amendment of Section 2).
3. Manner of Recognition (Amendment of Section 5).
4. New Sections 5A and 5B.

“5A. DETERMINATION OF DISPUTE BY REGISTRAR.”

“5B. REGISTRAR TO CAUSE NOTICE OF APPLICATIONS.”

5. New Division 3A.

“Division 3A. - Management of Incorporated Land Groups.”

6. Powers of Incorporated Land Groups (Amendment of Section 13).
7. Formalities of Group Action (Amendment of Section 14).
8. New Sections 14A to 14K.

“14A. ANNUAL GENERAL MEETING.”

“14B. MEETING TO ELECT MANAGEMENT COMMITTEE.”

“14C. CONVENING OF MEETINGS.”

“14D. CONDUCT OF MEETINGS.”

“14E. POWERS OF MANAGEMENT COMMITTEE.”

“14F. CHANGES IN MEMBERSHIP OF MANAGEMENT COMMITTEE.”

“14G. DISQUALIFICATION FROM OFFICE.”

“14H. BANK ACCOUNTS.”

“14I. STATEMENT OF ASSETS AND LIABILITIES.”

“14J. FINANCIAL INSTRUCTIONS.”

“14K. OFFENCES.”

9. Repeal and Replacement of Section 28.

“28. REQUIREMENT OF INFORMATION.”

10. Repeal and Replacement of Section 29.

“29. WILFUL MISCONDUCT.”

11. New Section 36.

“36. SAVINGS AND TRANSITIONAL ARRANGEMENTS.”

12. Repeal and Replacement of Schedule.

“SCHEDULE 1 PRESCRIBED MATERIAL TO BE IN THE APPLICATION FOR INCORPORATION OF A LAND GROUP.”

“SCHEDULE 2 SKETCH, DRAWING OR PLAN OF LAND WITH REFERENCE TO WHICH THE INCORPORATION OF A LAND GROUP IS SOUGHT.”

“SCHEDULE 3 MATTERS TO BE PROVIDED FOR IN THE CONSTITUTION OF EVERY LAND GROUP.”

“SCHEDULE 4 PROVISIONS WHICH ARE DEEMED TO BE CONTAINED IN THE CONSTITUTION OF EVERY GROUP.”

“SCHEDULE 5 PROVISIONS WHICH ARE DEEMED TO BE CONTAINED IN THE CONSTITUTION OF EVERY GROUP, UNLESS SPECIFICALLY EXCLUDED OR MODIFIED.”

“SCHEDULE 6 CODE OF CONDUCT FOR MEMBERS OF THE MANAGEMENT COMMITTEE.”

“SCHEDULE 7 CONSTITUTION (PROFORMA).”

“SCHEDULE 8. PROVISIONS RELATING TO WINDING-UP.”



No. of 2009.

AN ACT

entitled

Land Groups Incorporation (Amendment) Act 2009.

Being an Act to amend the *Land Groups Incorporation Act* (Chapter 147) to apply and give effect to the National Goals and Directive Principles of the *Constitution* as they relate and apply to ownership of lands held under customary tenure and dealings in those lands, and in particular to:-

- (a) allow development to take place primarily through the use of Papua New Guinea forms of social and political organization; and
- (b) encourage active steps to be taken to facilitate the organization and legal recognition of groups engaging in development activities; and
- (c) and to ensure the integrity and viability of these associations; and
- (d) provide for their transparent and effective management,

MADE by the National Parliament to come into operation in accordance with a notice published in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. **COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C of the *Constitution*, namely -

- (a) the freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of assembly and association conferred by Section 47 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*; and
- (d) the right to freedom of movement conferred by Section 52 of the *Constitution*,

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

(2) For the purposes of Section 40 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this law relates to a matter of national interest.

Land Groups Incorporation (Amendment)

2. INTERPRETATION (AMENDMENT OF SECTION 2).

The Principal Act is amended in Section 2 by:-

- (a) inserting after the definition of "certificate of recognition" the following definition:
 - "dissolute ownership" or "dissolute title" means a title which is not dependent upon any higher title but which is subject to and qualified by an interest derived from or dependent on that title;"; and

- (b) inserting after the definition of "the constitution" the following definitions:
 - "Court" means the National Court;
 - "customary land" means land that is owned or possessed by virtue of rights of a proprietary or possessory kind and regulated by custom, and includes –
 - (a) land below low-water mark and within jurisdiction; and
 - (b) land covered with water; and
 - (c) rights to rivers and streams;
 - "customary landowners" means a clan, lineage, family, extended family or other group of persons who hold, or are recognised under custom as holding, rights and interests in customary land, and includes a land group incorporated under the *Land Groups Incorporation Act* (Chapter 147);
 - "dealing" means a disposition of an estate or interest and includes a transfer, lease, surrender, mortgage, charge, discharge, easement and similar interests;"; and

- (c) inserting immediately after the definition of "dispute settlement authority" the following definitions:
 - "document" means any writing relating to land whether of a formal nature or otherwise;
 - "interest" or "interest in land" means –
 - (a) a legal or equitable estate or interest in land; or
 - (b) a right, power or privilege over, in or in connection with land;"; and

- (d) inserting immediately after the definition of "incorporated land group" the following definitions:
 - "interest" or "interest in land" means –
 - (a) a legal or equitable estate or interest in land; or
 - (b) a right, power or privilege over, in or in connection with land;";
 - "land" includes an interest in land.".

3. MANNER OF RECOGNITION (AMNDMENT TO SECTION 5).

The Principal Act is amended in Section 5 -

- (a) by repealing Subsection (2) and replacing it with the following:

Land Groups Incorporation (Amendment)

- “(2) The application shall -
- (a) be in the prescribed form; and
 - (b) be accompanied by a copy of the group’s proposed constitution; and
 - (c) be accompanied by a list of all members of the group; and
 - (d) contain further information as stated in Schedule 1 being such certified information required in the application form; and
 - (e) be accompanied by a sketch of the boundaries of the land to which the applicants claim ownership, including clearly marked areas of disputed boundaries if any, to which the applicants claim ownership as required under Schedule 2; and
 - (f) contain such other information as the Registrar requires.”; and

(b) by repealing Subsections (4), (6), (7), (8), (9) and (10).”.

4. NEW SECTIONS 5A AND 5B.

The Principal Act is amended by adding after Section 5, the following new sections –

“5A. DETERMINATION OF DISPUTE BY REGISTRAR.

If it appears to the Registrar that there are internal disputes relating to the identity of the group’s representatives, officers or membership, the Registrar shall determine whether to -

- (a) reject the application; or
- (b) withhold the processing of the application until the Registrar is satisfied, based on subsequent evidence, that the internal dispute has been settled and then proceed to incorporate the applicants.”.

“5B. REGISTRAR TO CAUSE NOTICE OF APPLICATIONS.

(1) In addition to the powers given under Section 33, the Registrar shall -

- (a) cause notice of all applications for recognition made under Section 5 to be published in the National Gazette; and
- (b) forward copies to -
 - (i) the district administrator in whose area the land-group or any of the property claimed on behalf of the land group is situated; and
 - (ii) the village court within whose jurisdiction members of the group reside andthe district administrator or the village court in receipt of such notice shall further disseminate notice of the application and particulars in such manner they think most likely to ensure that it is widely known to persons having knowledge of or an interest in the affairs of the land group or its members.

Land Groups Incorporation (Amendment)

“(2) The Registrar shall not issue a certificate of recognition unless he receives from the district administrator or a village court a confirmation notice of receipt of the documentation referred to in Subsection (1) and that they have complied with Subsection (1)(b).”.

5. NEW DIVISION 3A.

The Principal Act is amended by adding after Section 12 the following new heading of division -

“Division 3A. - Management of Incorporated Land Groups.”.

6. POWERS OF INCORPORATED LAND GROUPS (AMENDMENT OF SECTION 13.

The Principal Act is amended in Section 13 by repealing Subsection (3).

7. FORMALITIES OF GROUP ACTION (AMENDMENT OF SECTION 14).

The Principal Act is amended in Section 14 -

(a) by repealing Subsection (2) and replacing it with the following:

“(2) The *Statute of Frauds and Limitations Act 1988* applies to or in relation to -

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

(b) an agreement entered into by an incorporated land group affecting its land.”; and

(b) by adding after Subsection (2) the following new subsection:

“(3) A certified copy of all documents purporting to deal with an interest in land of an incorporated land group shall, on incorporation, be lodged with the Registrar and the Registrar shall record each document by a reference number and the date the document is filed and the name and address of the person lodging the document.”.

8. NEW SECTIONS 14A TO 14K.

The Principal Act is amended by adding after Section 14 the following new sections:

“14A. ANNUAL GENERAL MEETING.

(1) An annual general meeting of a group shall be held within 3 months of the incorporation of the group and thereafter within 3 months from the anniversary of incorporation.

“(2) The purposes of the annual general meeting are to -

(a) appoint the management committee and other officers of the association if there is a vacancy; or

(b) appoint members to the dispute settlement authority if there is a vacancy; or

Land Groups Incorporation (Amendment)

- (c) receive and consider the chairman's annual report and a financial report; or
- (d) consider such matters referred to the meeting by the Registrar."

"14B. MEETING TO ELECT MANAGEMENT COMMITTEE.

(1) Members of an incorporated land group shall meet at a specific time and place, in the area where the members of the incorporated land group reside to elect not more than ten and not less than six persons to form a management committee in accordance with the group's constitution.

"(2) The management committee shall include the chairperson of the incorporated land group, deputy chairperson, secretary, treasurer and two female persons elected by the members of the incorporated land group.

"(3) All members of the management committee, upon assumption of office, are automatically subject to the code of conduct stipulated in Schedule 6."

"14C. CONVENING OF MEETINGS.

If—

- (a) the members forming fifty percent of an incorporated land group; or
- (b) the Registrar; or
- (c) the district administrator,

so request, the chairperson (or in his absence the deputy chairperson) shall convene a meeting of the members within 14 days of the request.

"14D. CONDUCT OF MEETINGS.

(1) All members of an incorporated land group shall be entitled to attend the meetings of the group and vote.

"(2) A member under a disability enjoys rights under this Act as all members but has no right to vote at meetings of members, except through his guardian.

"(3) No business shall be transacted at a meeting of the members unless at least sixty percent of the members of the group are present at the meeting, out of which, at least 10% are of the other gender.

"(4) A resolution at a meeting of the members, supported by votes of not less than sixty percent of the members of the group present at the meeting shall be treated as the decision of the group.

Land Groups Incorporation (Amendment)

“(5) For the removal of a member or members of the management committee, a vote of 70 percent of the members present at the meeting is required.”

“14E. POWERS OF MANAGEMENT COMMITTEE.

The management committee has powers subject to the constitution and the Act to run the affairs of an incorporated land group.”

“14F. CHANGES IN MEMBERSHIP OF MANAGEMENT COMMITTEE.

(1) Where a member of the management committee dies, becomes incapacitated or wishes to retire he may be replaced by resolution of the members of an incorporated land group.

“(2) A member of the management committee may be removed or replaced by a resolution of the members of an incorporated land group at a general meeting or a special general meeting.

“(3) On change of membership of the management committee, the Registrar shall amend the register accordingly.”

“14G. DISQUALIFICATION FROM OFFICE.

No person, who has been convicted of a crime involving fraud or dishonesty, shall be capable of being appointed or elected to or remain in –

- (a) the office of treasurer, deputy treasurer or assistant treasurer of an incorporated land group; or
- (b) any other office the holder of which is responsible for the collection, disbursement, custody or control of the funds of an incorporated land group or for its account; or
- (c) the membership of a management committee; or
- (d) the position of trustee or auditor of an incorporated land group.”

“14H. BANK ACCOUNTS.

The management committee shall -

- (a) cause such bank accounts as are necessary for the proper conduct of the affairs of an incorporated land group to be opened and maintained; and

Land Groups Incorporation (Amendment)

- (b) pay all moneys received by an incorporated land group in connection with its business activities into those accounts; and
- (c) pay all moneys that an incorporated land group is required to pay in connection with its business activities out of those accounts."

"14I. STATEMENT OF ASSETS AND LIABILITIES.

The management committee shall –

- (a) cause to be prepared, in a form approved by the Registrar a statement of the assets and liabilities of an incorporated land group for each period of 12 months of the operations of an incorporated land 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."

"14J. FINANCIAL INSTRUCTIONS.

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

"(2) If the Registrar gives a direction under Subsection (1) –

- (a) the 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 land groups."

"14K. OFFENCES.

(1) Failure to comply with Sections 14H or 14I is an offence and makes each committee member liable to be prosecuted and on summary conviction to pay a fine not exceeding K500 or imprisonment for a term not exceeding 6 months, or both.

"(2) Failure to comply with the Registrar's direction under Section 14J is an offence and makes each committee member liable to be prosecuted and on summary conviction to pay a fine not exceeding K1,000.00 or imprisonment for a term not exceeding 12 months, or both."

9. REPEAL AND REPLACEMENT OF SECTION 28.

Section 28 of the Principal Act is repealed and replaced with the following:

Land Groups Incorporation (Amendment)

“28. REQUIREMENT OF INFORMATION.

(1) 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.

“(2) Any person may inspect, at the office of the Registrar, the register and any documents relating to any incorporated land group lodged under this Act with the Registrar, and may obtain from the Registrar a copy of or an extract from such register or document.

“(3) The management committee of an incorporated land group shall -

- (a) maintain a register of its members in such manner as the Registrar may require, or as may be prescribed, containing the name of each member and the date he qualified for membership; and
- (b) deliver to the Registrar, at his request, a current register of members.

“(4) The management committee of an incorporated land group shall make available for inspection by the Registrar or by any person authorized by him in writing, at all reasonable times of:-

- (a) its books of accounts, and all documents relating thereto; and
- (b) a list of the members.

“(5) Failure by the management committee to comply with Subsections (3) or (4) is a summary offence punishable with a fine of K2,000.00 or imprisonment for a term not exceeding 5 years.”.

10. REPEAL AND REPLACEMENT OF SECTION 29.

Section 29 of the Principal Act is repealed and replaced with the following:

“29. WILFUL MISCONDUCT.

Any person who -

- (a) wilfully makes any false statement or declaration in any application under this Act; or
- (b) wilfully suppresses, withholds or conceals or assist or is privy to suppressing, withholding or concealing from the registrar any material documents, fact or matter of information; or

Land Groups Incorporation (Amendment)

- (c) wilfully makes any false declaration or statement for purposes of or in relation to any dealing with land under this Act; or
- (d) fraudulently procures, assists in fraudulently procuring or is privy to the fraudulent procuring of a certificate of incorporation; or
- (e) knowingly misleads or deceives any person authorized under this Act or regulations to require information or explanation in respect of an application; or
- (f) occupying a fiduciary relationship, misappropriates any funds or property belonging to an incorporated land group, commits an offence and shall on summary conviction be liable to a fine not exceeding K5,000.00 or imprisonment for a term not exceeding 6 years or both."

11. NEW SECTION 36.

The Principal Act is amended by adding after Section 35 the following new section:

"36. SAVINGS AND TRANSITIONAL ARRANGEMENTS.

(1) On and from the coming into effect of this Act, all current and existing incorporated land groups incorporated prior to the coming into force of this Act shall on the coming into force of this Act be allowed to continue for a transitional period of 5 years only and that such incorporated land groups shall automatically cease to exist at the fifth anniversary from the date of effect of this Act.

"(2) Within the 5 years transitional period referred to in Subsection (1), all existing incorporated land groups shall apply for re-incorporation in full compliance of all the requirements of this Act."

12. REPEAL AND REPLACEMENT OF SCHEDULE.

The schedule to the Principal Act is repealed and replaced with the following new schedules:

Land Groups Incorporation (Amendment)

SCHEDULE 1.

Sec. 5(2).

PRESCRIBED MATERIAL TO BE PROVIDED IN THE APPLICATION FOR INCORPORATION OF A LAND GROUP.

1. The proposed name of the land group.
2. A true and complete list of its members including the qualification of each listed member.
3. Where a member is under a disability, the name and qualification of his guardian.
4. The original or in its absence a certified copy of the birth certificate of each person who claims membership of the group.
5. The qualification of the group seeking recognition as an incorporated land group stating they are not members of another incorporated land group.
6. A description of the land and the nature of the interest therein to which the group claims an entitlement, including a plan, if available, or sketch map or drawing of the land over which the applicants claim ownership or an interest therein, with reference to which they seek to be incorporated, in a manner specified in the Schedule 2.
7. A certified copy of the constitution of the land group.
8. A list of members of the management committee and other officers of the land group.
9. The proposed dispute settlement authority of the land group.

SCHEDULE 2.

Sec.5(2).

SKETCH, DRAWING OR PLAN OF LAND WITH REFERENCE TO WHICH THE INCORPORATION OF A LAND GROUP IS SOUGHT.

1. An application to the Registrar for the incorporation of a land group shall be accompanied by a sketch, drawing or plan of the land and contain a general description of the land including:
 - (a) its size and location; and
 - (b) use; and
 - (c) boundaries; and
 - (d) the names of the village and clan.

Land Groups Incorporation (Amendment)

2. If there is any dispute over the boundary or boundaries, the exact location of the disputed boundary or boundaries must be identified and the nature of the dispute noted on the document.
3. The document shall be signed by the chairman or vice chairman of the land group and dated.
4. The existence of a boundary dispute should be acknowledged by the relevant neighbor(s), or in his absence or refusal, village court official or councillor/ward member, countersigning the document.

SCHEDULE 3.

Sec. 8; Sec. 5.

MATTERS TO BE PROVIDED FOR IN THE CONSTITUTION OF EVERY LAND GROUP.

1. The name of the group.
2. A description of the area, being the land in or over which the group has, under recognized customary law, exercised rights recorded under Schedule 2 of the *Land Groups Incorporation Act* (Chapter 147).
3. The persons who are the original members of the group. =
4. The persons to whom membership is open.
5. The titles of group representatives (management committee) officers and auditors and their terms of office, method of election, appointment, dismissal and suspension.
6. The composition of committees (if any) of the group, the term of office of members of such committees, the method of their election, appointment, dismissal and suspension.
7. The authority for and the method of filling vacancies occurring amongst the officers of the group, and on committees, not in a manner inconsistent with the Act.
8. The frequency, quorums, method of calling and dates of the annual general meeting, referred to in Sections 14A, 14B, 14C, 14D and 14F.
9. The custody, and investment of the funds and property of the group, and the designation of the persons responsible for them.

Land Groups Incorporation (Amendment)

10. The purposes for which the funds and property of the group may be used.
11. The maintenance and inspection of books of account, the register of members and the record of interests, by any member or officer of the group, and by or on the order of the Registrar referred to in Sections 14H and 14I.
12. The periodic audit of accounts.
13. The manner of making rules of the Association.
14. The manner of amending the name, constitution or rules of the Association.
15. The manner of the dissolution of the Association and the disposal of its property on dissolution.

SCHEDULE 4.

Sec. 5; Sec. 8.

**PROVISIONS WHICH ARE DEEMED TO BE CONTAINED IN THE
CONSTITUTION OF EVERY GROUP.**

1. This constitution relates to the area of the land determined as being in the ownership of the group, or in respect of which that group has an interest, and therein described in the sketch plan.
2. All persons who are recorded as having an interest in the group land shall be entitled to become members of the group.
3. If he is not recorded in the register as a member of the group, no person shall be admitted to membership of the group unless -
 - (a) that person has inherited an interest from a person who was recorded on that register; or
 - (b) the group representatives (management committee) all agree and the representatives' decision is confirmed at an annual general meeting of the group; or
 - (c) a court so orders.
4. The rights of membership shall extend to all members regardless of how membership was obtained.
5. Every member shall have a right to reside free of charge on the group land together with his family and dependants.

Land Groups Incorporation (Amendment)

6. Every member shall be entitled to permit any other person to reside with him on the group land unless the group representatives decide otherwise in any particular case.
7. Every member shall be entitled to the use of the land, water rights, machinery, credit facilities, veterinary services, marketing arrangements, transport and other assets in the group ownership subject to such conditions as may from time to time be imposed in accordance with this constitution, which may include the levy of access, fees or other charges.
8. Every member shall be entitled to attend, to speak and to be heard, and to vote at all general meetings of the group.
9. The obligations of membership shall extend to all members regardless of how membership was obtained.
10. No disposition of any of the group land or any interest therein, may be made by the group representatives unless approved by the members.
11. The group representatives shall inform the members of the group of the activities carried on in the preceding period at each general meeting.
12. The group representatives shall ensure that the rights of any person recognized under customary law are safeguarded in so far as that is compatible with the operations of the group.
13. The group representatives elected at the general meeting held in accordance with Section 14A of the *Land Groups Incorporation Act* (Chapter 147) at which this constitution was adopted shall be the first group representatives of the group.
14. A group representative shall hold office until -
 - (a) he is replaced by a resolution of the group in general meeting; or
 - (b) he is convicted of a crime involving fraud or dishonesty; or
 - (c) he becomes incapable of performing the functions of his office, whether arising from illness or any other cause; or
 - (d) he retires.
15. The secretary shall be responsible for the conduct of all correspondence on behalf of the group, for the maintenance of proper records of such correspondence, registers, minutes and of all other documents relating to the group's activities, except for those for which the treasurer is responsible.
16. The treasurer shall be responsible for the maintenance of proper books of account containing details of all moneys received and payments made by him on behalf of the group, and of records of all the group's assets and liabilities of all kinds, and for the safe custody of all such records and of the group's funds or other valuables.

Land Groups Incorporation (Amendment)

17. If -

- (a) the Registrar; or
- (b) a majority of the group representatives; or
- (c) one-half of the group members; or
- (d) any person who considers that the affairs of the group are being conducted in a manner oppressive to some part of the members and who has obtained the written consent of the Registrar,

so requests, the chairman (or in his absence the vice-chairman, secretary or the Registrar shall convene a general meeting of the group within fourteen days after the date the request was made to discuss the matter and take appropriate decisions.

SCHEDULE 5.

Sec. 5; Sec. 8, Sec. 14A-14J.

PROVISIONS WHICH ARE DEEMED TO BE CONTAINED IN THE CONSTITUTION OF EVERY GROUP, UNLESS SPECIFICALLY EXCLUDED OR MODIFIED.

1. There shall be not more than ten and not less than five members of the management committee (group representatives) elected from among the members of the group in a general meeting, by a majority representing not less than sixty per cent of the votes of all the members present at the meeting.
2. If at any time there are less than five group representatives a general meeting shall be convened for the purpose of holding new elections to appoint them.
3. The group representatives shall consult the members of the group in a general meeting before disposing of any land held by the group or any interest in such land.
4. The group representatives shall meet whenever required and not less than once in every six months. Unless otherwise required by the Act or these rules the group representatives may establish their own procedure provided that no business shall be transacted at any meeting unless three group representatives are present in person.
5. The group shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall be specified as such in the notices calling it.
6. Notice of the dates on which any general meeting of the group is to be held shall be given to all members not less than two weeks in advance.
7. The chairman of the management committee, (or in his absence, the vice chairman) shall preside at any general meeting of the group subsequent to the meeting held in accordance with Section 14A of this Act.

Land Groups Incorporation (Amendment)

8. The person presiding at a meeting may, if no quorum is present, adjourn the meeting from time to time, and from place to place provided that, if a meeting at which a quorum is not present is adjourned, notice of the adjourned meeting shall be given in the same way as notice of the original meeting.
9. The quorum for a general meeting of the group shall be not less than sixty per cent of the total number of members of the group.
10. The accidental omission to give notice of a meeting to, or the non-receipt of a notice by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.
11. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless not less than sixty per cent of the members present agree to a demand for a ballot.
12. Unless a ballot is demanded, a declaration by the chairman of the meeting that a resolution has on a show of hands been carried, or lost, and an entry to that effect in the book containing the minutes of the proceedings shall be conclusive evidence of the fact.
13. In the case of an equality of votes, whether on a show of hands or on a ballot, the chairman of the meeting shall be entitled to a second or casting vote.
14. No member shall be entitled to vote at any general meeting otherwise than in person unless he is recorded in the register of members as being under disability in which case the guardian of a member under a disability may vote on his behalf.
15. Except with the approval of the Registrar, nominations for office under the constitution of the group shall be of members only, and may be made and seconded by members only.
16. The management committee of the group shall consist of a chairman, vice-chairman, secretary, treasurer, and three other members, of whom not less than two shall be elected from amongst the group members of the other gender.
17. All the members of the committee shall be elected by open ballot at the group's annual general meeting, or at any subsequent general meeting convened for that purpose, and shall hold office for two years unless otherwise removed.
18. At the end of his period of office any member of the committee shall be eligible for re-election.
19. In the event of a member of the committee being convicted of a crime involving fraud or dishonesty, he becomes disqualified to hold office, or if an office holder fails to carry out his duties satisfactorily, the committee may suspend such office-holder until the next general meeting and such person shall then be deemed to have retired.

Land Group Incorporation (Amendment)

20. Any vacancy arising in the membership of the committee whether by reason of the suspension of a member or otherwise may be filled by a nominee appointed by the committee until such time as the office is filled by election at a general meeting.
21. The committee shall meet not less frequently than once every three months.
22. The committee shall have power to co-opt suitable persons for such periods as they think fit but such persons shall not have the right to vote.
23. The chairman shall bear overall responsibility for the conduct of all business by the committee on behalf of the group.
24. The vice-chairman shall assist the chairman and shall deputize for him in his absence.
25. A member shall be entitled to pledge his own private property, including stock, as security for any loan and the group, the group representatives and the committee shall not in any circumstances be responsible for anything to do with such a loan.
26. The committee shall be responsible for conducting the affairs of the group with a view to achieving the greatest practicable social and economic benefit for the members.
27. The committee shall be empowered to raise credit and to hold and use moneys for the benefit of members.
28. The committee shall be responsible for preparing a plan for the registration and development of the land and for the implementation of that plan and in the preparation of that plan the committee shall consult with the Registrar and submit to the group in general meeting for approval.
29. The committee may issue instructions to members and may make rules for the purpose of the working of the operations of the group.
30. The committee shall conform to any instructions received from a majority of the group representatives in any matters relating to membership.
31. Every member shall accept and comply with the decisions of the committee regarding membership of the group and the rights and obligations of any person in matters relating to the use of the group land and other assets.
32. The committee shall be responsible -
 - (a) for maintaining -
 - (i) a register of all members of the group; and
 - (ii) full and accurate minutes of all general meetings of the group, and of all meetings of the committee; and

Land Groups Incorporation (Amendment)

- (iii) a full and accurate account of the income and expenditure and of the assets and liabilities of the group; and
- (b) for presenting such accounts within three months of the end of the financial year to the Registrar for approval.

33. The provisions of the constitution, other than those which may from time to time be prescribed, may be altered, repealed or added to by a resolution passed by a sixty per cent majority of the members of the group present in person or by proxy at a special general meeting convened for that purpose and of which due notice has been given.

SCHEDULE 6.

Sec. 14B(3).

CODE OF CONDUCT FOR MEMBERS OF THE MANAGEMENT COMMITTEE.

1. There is hereby established a code of conduct being the body of rules contained below.
2. The provisions of this code are in addition to and not in derogation of provisions in the Principal Act, the *Criminal Code Act* (Chapter 262) or any other rule of any law or equity.
3. A member of the committee -
 - (a) shall keep separate the incorporated land group's property, in particular its funds, from his personal property, and there shall not be self dealings, i.e. must not borrow from the incorporated land group's fund;
 - (b) in order to buy incorporated land group's assets or sell his own to the incorporated land group or make loans to it, must first get the approval of the members through the annual general meeting or a special meeting;
 - (c) must not make any profit by virtue of his position, and must account for any profit received and generally must not allow the pursuit of his private interest to conflict with his duties to the members;
 - (d) is personally responsible for the exercise of his judgments and the performance of his duties and cannot escape responsibility by leaving to another person the exercise of that judgment or the performance of that duty even if that other person is a co fiduciary, nor should he allow other ordinary member to participate in the management and control of the association's property;
 - (e) is responsible to treat all members equally and there should be no discrimination between the membership;
 - (f) should furnish to the members on demand information on transactions over the land and must keep an accurate record of the group's land and other assets and allow a member to inspect the record;
 - (g) in his management of the land should exercise the same diligence and prudence as an ordinary prudent man of business would exercise in conducting his own business;

Land Groups Incorporation (Amendment)

- (h) should be honest in dealing with the incorporated land group's assets and in particular avoid dissipating the funds in speculative or unnecessary ventures or activities;
 - (i) when acting on behalf of the incorporated land group should minimize administrative expenses and avoid charging personal expenses or debts to trust funds; and
 - (j) in investing the incorporated land group's funds shall be guided by the constitution and be prudent in his choice of investments.
4. Any person who is in breach of any provision of the code of conduct shall be liable, on summary conviction, to a fine of K5,000.00 and or imprisonment for a term not exceeding six years.

SCHEDULE 7.

Sec. 5(2)(b); Sec. 8.

CONSTITUTION (PROFORMA)

of the

(NAME) LAND GROUP (INCORPORATED).

1. NAME.

The name of the group is the**LAND GROUP**
(INCORPORATED)", in this constitution it will be referred to as "the land group".

2. LAND.

A description of the land and interests of the land group is contained in the form that is attached to the 'application for incorporation' of the land group.

3. MEMBERSHIP.

(1) Membership of the land owning group is determined according to the customs of the area.

(2) The qualification for membership of the land group is that a person recognises himself or herself, and is recognised in accordance with custom by other legitimate customary clan members from(name of village), as being a member of the.....(group) seeking incorporation.

4. RECORDING MEMBERSHIP.

(1) It shall be a primary function of the land group management committee to maintain an up-to-date record of its members as recognized by the customs of the clan.

Land Groups Incorporation (Amendment)

(2) The record of members shall be updated by the committee not less than once every year and shall remain in the custody of the committee.

(3) Except for future membership upon birth, before any addition to or amendment of the record of members shall be made by the committee, such amendment should first be approved by the members at two separate meetings held at least one (1) month and not more than three (3) months apart.

(4) Immediately following the decision of the land group to adopt any changes to the membership of the land group, the committee shall -

- (a) record the names of the persons to be added to or deleted from the list of clan members; and
- (b) record the date of the decision of the land group to adopt the change of membership of the clan; and
- (c) certify the changes to be made by signing in their own handwriting their respective signatures to each record of change of membership, and date such certificate on the date such changes were so recorded.

5. MANAGEMENT COMMITTEE.

(1) The controlling body of the land group is(title) of the(ILG Name) Land Group Management Committee referred to in the rest of this constitution as the "the committee"; and

(2) The composition of the committee is not less than 6 and not more than 10 members, including the following officers:-

- (a) chairperson; and
- (b) vice chairperson; and
- (c) treasurer; and
- (d) secretary; and
- (e) committee member; and
- (f) female committee member.

(3) All officers of the land group are to be elected by open ballot at the group's general meeting and a committee member shall not take up office unless and until he subscribes to the code of conduct.

(4) A person ceases to be a member of the committee if he:-

- (a) is removed by a resolution of the group in a general meeting; or
- (b) is unable to perform the functions of his office, whether through illness or any other cause; or
- (c) retires; or
- (d) is disqualified by virtue of being convicted of a crime involving fraud or dishonesty.

Land Groups Incorporation (Amendment)

(5) The committee is responsible for the efficient conduct of the affairs of the land group and in particular shall:-

- (a) call meetings of the members sufficiently often to keep them well informed of the affairs of the group; and
- (b) make sure that suitable records of the meeting and other affairs of the land group are kept and looked after.

(6) Any member of the committee may be removed by the members of the group at a meeting duly convened in accordance with the provisions of this constitution and the Act.

(7) A vacancy arising in the membership of the committee whether by reason of suspension of a member or otherwise may be filled by a nominee appointed by the committee to hold office for such time until the office is filled by election at a general meeting.

6. MANNER IN WHICH THE GROUP ACTS.

(1) The land group acts in the following manner:-

- (a) before taking any important decision affecting the group or its property, the committee shall convene a meeting and give notice to the members stating:-
 - (i) when and where the land group will meet; and
 - (ii) the nature of the matter to be dealt with at the meeting; and
- (b) notice given under Paragraph (a) must be sufficient to allow the members of the land group resident in(village) to attend the meeting, and normally should not be less than seven days in advance; and
- (c) the matter on which the land group proposes to act shall be fully discussed at the meeting, and a decision reached on the matter by the requisite majority of vote as stated under this constitution or the Act; and
- (d) a decision reached in accordance with Paragraphs (a), (b) and (c) shall not be invalidated by reason of the absence from the meeting of any individual member or members of the land group, provided however that the necessary quorum as required under the Act has been met; and
- (e) when a decision is reached in the above manner, that decision is the decision of the land group, and is sufficient authority for the committee to act on behalf of the land group.

(2) The acts of the land group are evidenced by the members of the committee completing and signing the certificate in the schedule to this constitution.

7. SCHEDULE OF MEETINGS.

(1) The group shall in each year hold a general meeting as its annual general meeting in addition of any other meetings in that year, and shall specify the meeting as such in the notices calling it.

(2) Not more than fifteen months shall elapse between the date of one annual general meeting of the group and the next.

Land Groups Incorporation (Amendment)

(3) Notice of the dates on which any general meeting of the group is to be held shall be given to all members not less than two weeks in advance.

(4) The chairman of the committee, (or in his absence, the vice chairman) shall preside at all meetings of the group subsequent to the meeting at which this constitution was adopted.

(5) The accidental omission to give notice of a meeting to, or the non-receipt of a notice by, any person entitled to receive it shall not invalidate the proceedings at the meeting.

8. QUORUM.

(1) The quorum for a general meeting of the group shall be not less than sixty per cent of the total number of members of the group.

(2) The person presiding at a meeting may, whether or not a quorum is present, adjourn the meeting from time to time, and from place to place provided that, if a meeting at which a quorum is not present is adjourned, notice of the adjourned meeting shall be given in the same way as notice of the original meeting.

9. RESOLUTIONS.

(1) At a general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless not less than sixty per cent of the members present agree to a demand for a ballot.

(2) Unless a ballot is demanded, a declaration by the chairman of the meeting that a resolution on a show of hands is carried, or lost, and an entry to that effect in the book containing the minutes of the proceedings shall be conclusive evidence of the fact.

(3) In the case of an equality of votes, whether on a show of hands or on a ballot, the chairman of the meeting shall be entitled to a second or casting vote.

10. RIGHT TO VOTE.

(1) No member shall be entitled to vote at any general meeting otherwise than in person unless he is recorded in the register of members as being under disability and a proxy for a member under a disability need not be a member of the group.

(2) Except with the approval of the Registrar, nominations for office under the constitution of the group shall be of members only, and may be made and seconded by members only, and no member may nominate or second a nomination of himself.

11. POWERS.

(1) The land group has all the powers conferred by this Act, and the land group shall not dispose of the absolute ownership of the group land, except on dissolution.

Land Groups Incorporation (Amendment)

(2) The powers referred to above are those in Section 13 of the Act, which are that the land group can -

- (a) acquire, hold, and dispose of customary land in a customary manner; and
- (b) register its land in accordance with the provisions in this Act; and
- (c) acquire, hold, and dispose of rights in non customary land; and
- (d) use and manage its land, or enter into agreements for its use or management; and
- (e) borrow money for its land development; and
- (f) distribute or apply any products, profits or income from its land to its members.

(3) The land group is entitled to establish and maintain a fund determined from time to time by its members as being sufficient for -

- (a) management of the property; and
- (b) capital improvements; and
- (c) investments; and
- (d) discharge of other obligations.

(4) The power to receive, distribute or apply any products, profits or income from the group's land or any other income accruing to the land group by virtue of its being a land group, can be exercised only by the committee in accordance with this constitution, and any attempt by an individual member or members of the land group to exercise these powers shall be invalid and any loss, damage or deprivation of any money or property or the use thereof caused by or arising from the actions of any individual member or members acting invalidly shall be actionable by such members suffering such loss, damage or deprivation against the perpetrators of such invalid action in a court of law in Papua New Guinea.

(5) The land group's power to lease land owned by it, or enter into a similar agreement disposing of the use of such land, or to enter into an agreement for the use of such land, or to enter into an agreement for the management of such land, is subject to the condition that the terms of any such lease or agreement have been set out in a written document which has been approved by a decision of the land group reached in accordance with the requirements of Clause 5 of this constitution.

(6) Upon the adoption of this constitution by the land group, all members of the land group are deemed to subject themselves to the full jurisdiction of the laws of Papua New Guinea, and without limiting the generality of the foregoing, it shall not be necessary for any court of law to enquire as to whether any member appearing before it consented to the jurisdiction of the court.

12. CUSTOM WHICH APPLIES.

The land group shall act in accordance with the customs of the people, but on incorporation, custom ceases to apply.

Land Groups Incorporation (Amendment)

13. DISPUTE SETTLEMENT AUTHORITY.

(1) The dispute settlement authority of the land group is made up of the appointees from the land groups of.....(village) and the appointee of the(ILG Name) land group (incorporated) is:-

(2) In accordance with.....(clan) custom the dispute settlement authority will consult with elders from(village) clan village, in the course of their deliberations.

14. ADDRESS FOR SERVICE.

The address for service of documents on the land group is:

.....the secretary,
.....(ILG Name) land group (incorporated)
.....(village)
.....(district)
.....(province)
Papua New Guinea.

15. ACTS OF LAND GROUP BINDING ON ALL MEMBERS.

Any acts taken by the land group and or the management committee in accordance with this constitution is binding on all members of the land group.

16. RULE MAKING POWER.

(1) The committee may make rules applying to the internal affairs of the group.

(2) Any rule made under Subclause (1) shall -

(a) be in writing; and

(b) be in the..... (group) language and a rule shall only take effect if it has been approved by a decision of the land group reached in accordance with the requirements of this constitution.

(3) A rule which is inconsistent with this constitution is invalid.

17. ADOPTION OF THIS CONSTITUTION.

(1) A meeting shall be duly convened by the members of the land group at a time and place to be nominated by the Committee members.

(2) If agreed to the provisions of the constitution, they shall adopt the constitution.

(3) The committee shall be duly authorised to certify the adoption of the constitution on behalf of the members and are required to annex such certification to the constitution including a record of the consensus decision taken at the meeting called for the purpose of adoption of the constitution, whereupon the constitution shall be adopted.

Land Groups Incorporation (Amendment)

SCHEDULE 8.

Sec. 16.

PROVISIONS RELATING TO WINDING-UP.

8.1 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.

8.2 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.

8.3 PRIORITIES, ETC.

Subject to Section 8(3)(d) of the *Land Redistribution Act* (Chapter 190) 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

Land Groups Incorporation (Amendment)

- (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.

8.4 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.

8.5 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* (Chapter 46).

Land Groups Incorporation (Amendment)

(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* (Chapter 46).

(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.

8.6 RIGHT OF ACCESS.

(1) A person referred to in Schedule 8.5(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 Schedule 8.5(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.

8.7 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.

Land Groups Incorporation (Amendment)

8.8 OFFENCES AS TO LAND ENTERED.

(1) If -

- (a) the requirements of Schedule 8.5(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 Schedule 8.7(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.

8.9 REBATE OF DEBTS ON ACCOUNT OF DAMAGE, ETC.

(1) If -

- (a) the requirements of Schedule 8.5(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 Schedule 8.7(1),

the court that convicts a person of an offence against Schedule 8.8, or in any case the Registrar, may order that -

- (c) the amount of all or any debt 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.

Land Groups Incorporation (Amendment)

I hereby certify that the above is a fair print of the ***Land Groups Incorporation (Amendment) Act 2009*** which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the ***Land Groups Incorporation (Amendment) Act 2009*** was made by the National Parliament on 19 March, 2009, by an absolute majority in accordance with the ***Constitution***.

Speaker of the National Parliament.