

No. 6 of 1990.

National Housing Corporation Act 1990.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 6 of 1990.

National Housing Corporation Act 1990.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

National Housing Corporation Act 1990,

Being an Act to provide for the establishment of the National Housing Corporation and to define its powers and functions, and for related purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears–

“**acquire**”, in relation to the acquisition of a building or land by the Corporation includes obtaining a right of disposition and control sufficient to enable the Corporation to let or sell the building or land or a building on the land;

“**approved applicant**” means–

- (a) the State; or;
- (b) an instrumentality of the State; or
- (c) a Provincial Government; or
- (d) an instrumentality of a Provincial Government; or
- (e) a Local-level Government; or
- (f) an organization or person declared under Section 2 to be an approved applicant for the purposes of this Act;

“**associated building**” means a building or construction or a proposed building or construction, declared under Section 4 to be an associated building for the purposes of this Act;

“**the Corporation**” means the National Housing Corporation established by Section 5;

“**dwelling**” includes the appurtenances, outbuildings, fences and permanent provision of lighting, water supply, drainage and sewerage provided in connection with a dwelling, and in relation to letting, selling, vacating or erecting also includes the land on which a dwelling is situated but does not otherwise include land;

“**economic rent**”, in relation to a dwelling, means the economic rent determined in accordance with Schedule 2, subject to any applicable variation under Section 33;

“**eligible person**” means a person declared under Section 3 to be eligible for assistance under Part IV;

“**equipment**”, in relation to a building, includes any furnishing, fitments or appliances provided in the building for the better use of the building for its purpose;

“**Housing Commission**” means the Housing Commission established under the *Housing Commission Act* (Chapter 79), repealed by this Act;

“**the Managing Director**” means the Managing Director appointed under Section 17;

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

“**this Act**” includes the regulations.

2. DECLARATION OF APPROVED APPLICANTS.

The Minister may declare an organization or person to be an approved applicant for the purposes of this Act.

3. DECLARATION OF ELIGIBLE PERSONS.

The Corporation may declare a person to be a person eligible for assistance under Part IV. by reason of—

- (a) his limited means; or
- (b) his present unsuitable housing; or
- (c) any other circumstances considered relevant by the Corporation.

4. DECLARATION OF ASSOCIATED BUILDINGS.

The Minister may, by written notice, declare a building or a construction ancillary to a building or a proposed building or a proposed construction to be an associated building or associated buildings for the purposes of this Act.

PART II. – THE NATIONAL HOUSING CORPORATION.

Division 1.

Establishment and Constitution of the Corporation.

5. ESTABLISHMENT OF THE CORPORATION.

A National Housing Corporation is hereby established.

6. INCORPORATION OF THE CORPORATION.

(1) The Corporation–

- (a) is a corporation; and
- (b) has perpetual succession; and
- (c) shall have a seal; and
- (d) may acquire, hold and dispose of property; and
- (e) is capable of suing and being sued in its corporate name.

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

7. CONSTITUTION OF THE CORPORATION.

(1) The Corporation shall consist of nine Board members comprising–

- (a) the following *ex officio* members:–
 - (i) the Managing Director;
 - (ii) the Head of the Department responsible for finance and planning, or his nominee;
 - (iii) the Head of the Department responsible for lands and physical planning, or his nominee; and
- (b) six persons of whom–
 - (i) one shall have professional experience in senior management and corporate planning; and
 - (ii) one shall have professional experience in architecture and town planning; and
 - (iii) one shall have experience in training and industrial relations; and
 - (iv) one shall be a representative of the National Council of Women; and
 - (v) one shall be a representative of the National Council of Churches; and

(vi) one shall be appointed on the Minister's nomination.

(2) A person nominated under Subsection (1)(a) shall be an officer of the level of First Assistant Secretary or some other position above that level in the Public Service.

(3) A person appointed under Subsection 1(b)–

(a)¹ shall be appointed in accordance with the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*; and

(b) shall hold office for a period of three years; and

(c) shall be eligible for re-appointment.

8. CHAIRMAN OF THE BOARD.

(1) The Head of State, acting on advice, shall appoint one of the members of the Board to be the Chairman of the Board.

(2) If the Chairman is absent from any meeting of the Board or is unable to act in relation to a matter, the person elected under Section 15(3)(b) has and may exercise and perform the powers and functions of the Chairman.

9. TERMS AND CONDITIONS OF MEMBERS OF THE BOARD.

Subject to this Act, the terms and conditions of the members of the Board are as determined by the Minister.

10. ALTERNATE MEMBERS.

(1) For each member of the Board appointed under Section 7(1)(b), an alternate member may be appointed in the same way, having the same qualifications and subject to the same conditions as the member for whom he is the alternate.

(2) Where a member of the Board is–

(a) on leave of absence; or

(b) absent from the country; or

(c) out of speedy and affective communication or is not readily available to perform the duties of his office,

his alternate has and may exercise all his powers and perform all his functions and duties under this Act.

(3) An alternate member may, unless the Board otherwise direct, attend all meetings of the Board but, except as provided under Subsection (2), he shall not take part in debate, vote on a matter or be counted towards the quorum.

¹ Section 7 Subsection (3) amended by No. 78 of 2006, s. 1.

11. OATH AND AFFIRMATION OF OFFICE.

A member of the Board shall, before entering on the duties of his office, make and subscribe before the Minister, or a person authorized by the Minister for the purpose, an oath or an affirmation of office in the prescribed form.

12. DISMISSAL OF MEMBERS OF THE CORPORATION.

(1) The Head of State, acting on advice, may at any time, by written notice, advise a member of the Board that he intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour.

(2) Within 14 days of the receipt of a notice under Subsection (1), the member may reply in writing to the National Executive Council who shall consider the reply and where appropriate, the Head of State, acting on advice, shall terminate the appointment of the member.

(3) Where the member referred to in Subsection (1) does not reply in accordance with Subsection (2), his appointment is terminated.

13. VACATION OF OFFICE.

(1) The office of a member of the Board becomes vacant—

- (a) if he becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (b) if he resigns his office by writing under his hand addressed to the Minister, and the resignation is accepted; or
- (c) if he is absent, except on leave granted by the Minister, from three consecutive meetings of the Corporation during any period of 12 months unless he is represented at those meetings by his alternate member; or
- (d) if, in any way, otherwise than with the approval of the Minister or as a member, and in common with the other members, of an incorporated company consisting of not less than 25 persons, he—
 - (i) is concerned or interested in a contract or agreement entered into by or on behalf of the Corporation; or
 - (ii) participates or claims to participate in the profit of any such contract or agreement or in any benefit or emolument arising from any such contract or agreement.

(2) Where a member of the Corporation—

- (a) dies; or
- (b) his office becomes vacant under Subsection (1); or
- (c) his appointment is terminated under Section 12,

the Head of State, acting on advice, shall by notice in the National Gazette, declare his office vacant.

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

14. LEAVE OF ABSENCE.

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

15. MEETINGS OF THE BOARD.

(1) The Board shall meet at such times and places as the Chairman determines.

(2) The Minister may at any time convene a meeting of the Board.

(3) At a meeting of the Board—

(a) three members are a quorum; and

(b) the Chairman, or in his absence a member elected by the members present from their own number, shall preside; and

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

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

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

16. VOTING ETC., WHEN INTERESTED.

(1) A member of the Board whose office becomes vacant by virtue of Section 13(1)(d) and who takes part in any deliberation or decision of the Corporation where the matter or question involved relates directly or indirectly to, or to the subject-matter of, the contract, agreement, tender, bid, offer or application in question, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding twenty four months.

(2) A contravention of Subsection (1), or the counting of a person to whom that subsection applies towards a quorum at a meeting of the Board for the purpose of any deliberation or decision referred to in that subsection, does not, unless the National Court, on application by the Corporation, otherwise directs, affect the validity of any thing done by the Corporation.

Division 2.

Managing Director.

17. APPOINTMENT.

(1) There shall be a Managing Director of the Corporation who—

- (a)² shall be appointed, suspended or dismissed in the manner as is specified in the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*; and
- (b) shall be appointed for such period not exceeding four years as the Head of State, acting on advice, determines; and
- (c) subject to this Act, holds office on such terms and conditions as the Head of State, acting on advice, determines; and
- (d) is eligible for re-appointment.

(2) The Managing Director shall be the Chief Executive of the Corporation and shall manage and direct its affairs, and, in relation to the management of the Corporation and the direction of its affairs, shall act in accordance with any policies determined by the Board.

18. TERMINATION OF APPOINTMENT.

(1) If the Managing Director—

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office by writing under his hand to the Minister; or
- (c) occupies or holds any other paid office or employment or engages in the practice of any profession or business, without the written consent of the Minister; or
- (d) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (e) is convicted of an offence punishable under a law by death or by imprisonment for one year or longer, and, as a result of the conviction, is sentenced to death or imprisonment,

the Head of State, acting on advice, shall terminate his appointment.

(2) Subject to Subsection (3), the Head of State, acting on advice, may at any time, by written notice, terminate the appointment of the Managing Director on the grounds of inability, inefficiency, incapacity or misbehaviour.

(3) The Head of State, acting on advice, shall not terminate the appointment of the Managing Director unless he has given the Managing Director one month prior notice in writing of his intention to do so.

² Section 17 Subsection (1) amended by No. 78 of 2006, s. 2.

(4) Within 14 days of the receipt of a notice under Subsection (3), the Managing Director may reply in writing to the Head of State, who shall, acting on advice, consider the reply and, where appropriate, terminate the appointment.

(5) Where the Managing Director does not, within 14 days of the receipt of a notice under Subsection (4), reply in writing to the Head of State, his appointment is terminated.

(6) Where the appointment of the Managing Director is terminated under this Section, the Head of State shall, by notice in the National Gazette, declare his office vacant.

19. PUBLIC SERVICE RIGHTS.

Where an officer of the Public Service is appointed under Section 17, his service as Managing Director shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of—

- (a) leave of absence on grounds of illness; and
- (b) furlough or pay instead of furlough (including pay to dependants on the death of the officer).

Division 3.

The Service of the Corporation.

20. APPOINTMENT OF OFFICERS.

(1) The Corporation may appoint to be officers of the Corporation such persons as it thinks proper and necessary for the purposes of the Corporation.

(2) The officers of the Corporation constitute the Service of the Corporation.

(3) A person shall not be admitted to the Service of the Corporation unless he makes and subscribes an oath or affirmation of office in the prescribed form.

(4) An officer of the Corporation holds office for such period and on such terms and conditions as are determined under Section 22.

Note The *Public Services (Management) Act 1986* was repealed and replaced by the *Public Services (Management) Act 1995*.

(5) If a person appointed under this section was, immediately before his appointment, an officer of the Public Service, his service as an officer of the Corporation shall be counted as service in the Public Service for the purpose of determining his existing and accruing rights under the *Public Services (Management) Act 1995*.

Note The *Public Services (Management) Act 1986* was repealed and replaced by the *Public Services (Management) Act 1995*.

(6) An officer in the service of the Corporation is an officer to which the provisions of the *Public Services (Management) Act 1995* relating to leave to serve under another Act apply.

21. TEMPORARY AND CONTRACT APPOINTMENTS.

(1) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the Corporation may employ—

- (a) for a fixed period of service under a formal contract in writing; or
- (b) for a short or indefinite period of service not under a formal contract in writing,

such persons as it thinks proper and necessary for the purposes of the Corporation.

(2) The tenure of office and the terms and conditions of service of a person employed under this section are as determined under Section 22.

22. CONDITIONS OF APPOINTMENT.

(1) Subject to the *Salaries and Conditions Monitoring Committee Act 1988* the Corporation shall, in accordance with this section, determine—

- (a) the tenure of office and the terms and conditions of service of officers and other employees under this Division; and
- (b) other matters relating to the Service of the Corporation or other employment with the Corporation.

(2) A determination under this section—

- (a) shall be in writing under the seal of the Corporation; and
- (b) shall not be expressed to take effect commencing on a day before the date of the making of the determination where, if it so took effect—
 - (i) the rights of a person or authority (other than the Corporation) existing at the date of the making of the determination would be affected in a manner prejudicial to him or it; or
 - (ii) liabilities would be imposed on a person or authority (other than the Corporation) in respect of anything done or omitted to be done before the date of the making of the determination,

and where in such a determination a provision is made in contravention of this subsection the provision has no effect.

(3) The Corporation shall cause a determination made under this section to be brought as soon as possible to the notice of the officers and other employees of the Corporation.

(4) The Managing Director may, at the direction of, and on behalf of the Corporation, execute contracts of employment in accordance with a determination under this section.

(5) Every non-citizen employed or to be employed under this Division shall have attached to his contract a detailed training experience document and a detailed training and localization program for the purpose of training a citizen to replace him.

(6) Failure by a non-citizen to comply with the training and localization program referred to in Subsection (5) or any direction issued from time to time by the Corporation on training of a citizen shall be sufficient cause for the termination of the contract of employment of that non-citizen.

Division 4.

Finance.

23. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT.*

Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Corporation, subject to the exceptions and modifications set out in Schedule 1.

Note The *Public Finances (Management) Act 1986* was repealed and replaced by the *Public Finances (Management) Act 1995*.

24. MONEYS OF THE CORPORATION GENERALLY.

(1) The Corporation shall open and maintain such bank accounts, with such bank or banks as the Minister approves for the purpose, as are necessary for the exercise and performance of its powers and functions, and shall pay into them—

- (a) all moneys received from the State for the purposes of this Act; and
- (b) all moneys appropriated by Act for the purpose of carrying out or giving effect to this Act; and
- (c) all moneys received by the Corporation for the sale, leasing or hire of property; and
- (d) all other moneys received by the Corporation in the exercise and performance of its powers, functions and duties.

(2) Out of the moneys standing to the credit of the accounts referred to in Subsection (1), the Corporation shall pay—

- (a) all moneys payable by it in repayment of advances or loans under this Act; and
- (b) the costs, charges and expenses incurred by the Corporation in the performance of its functions under this Act; and
- (c) the remuneration and allowances of the members of the Board of the Corporation and of officers and employees of the Corporation; and
- (d) any other payments that the Corporation is authorized or required to make under this Act.

(3) In respect of moneys advanced or borrowed under this Act for the purposes of the Corporation, the Corporation shall maintain a separate account in respect of the moneys that are related to each such purpose, and shall cause proper entries of—

(a) all moneys so advanced or borrowed for a particular purpose of the Corporation; and

(b) the purpose to which the moneys have been applied,

to be made in the account maintained in respect of that purpose.

25. BORROWING FROM APPROVED BANKS, ETC.

(1) In this section—

“approved bank” means the Central Bank or any other bank approved by the Minister for the purposes of this section;

“approved Institution” means an institution or corporation approved by the Minister for the purposes of this section.

(2) Subject to this Act, the Corporation may borrow money at interest from an approved bank or an approved institution, by way of mortgage, bank overdraft or otherwise, for—

(a) the purposes of the Corporation under this Act; or

(b) the repayment or partial repayment of an amount previously borrowed,

within such limits and on such conditions as the Minister approves.

(3) The Minister may, for and on behalf of the State, guarantee to any person from whom the Corporation borrows money under Subsection (2) the repayment, out of moneys lawfully available for the purpose, of any loan under that subsection, with interest.

26. CORPORATION LIABLE TO TAXATION.

The income, property and operations of the Corporation are subject to the provisions of the *Income Tax Act 1959*.

PART III. – POWERS AND FUNCTIONS OF THE CORPORATION.**27. POLICY DIRECTIONS BY N.E.C.**

(1) Subject to Subsections (2) and (3), the Corporation shall give effect to any direction given to it by the Head of State, acting on advice, or by the Minister on any matter of policy relating to the exercise or performance of its functions or powers.

(2) Where a policy direction given under Subsection (1), and its implementation result in the Corporation—

- (a) incurring additional expenditure; or
- (b) receiving reduced revenue,

the Corporation shall be compensated by the State for such amount relative to the additional expenditure or reduced revenue.

(3) In the absence of an agreement or if there is no agreement on the amount of any compensation under Subsection (2), the matter shall be referred to a single arbitrator in a case where the State and the Corporation agree upon one otherwise two arbitrators one each to be appointed by the State and the Corporation in accordance with and subject to the provisions of the *Arbitration Act 1951* or any statutory modification thereof for the time being in force.

28. GENERAL FUNCTIONS OF THE CORPORATION.

(1) Subject to this Act, the functions of the Corporation are—

- (a) to improve housing conditions; and
- (b) to provide adequate and suitable housing for letting to eligible persons; and
- (c) to sell houses to eligible persons; and
- (d) to make advances to eligible persons and approved applicants to enable them to become the owners of their own homes; and
- (e) to develop physically residential land by way of providing adequate services for human settlements; and;
- (f) to provide adequate and suitable housing by way of sale or lease to approved applicants; and
- (g) to provide associated buildings; and
- (h) generally to do such supplementary, incidental or consequential acts and things as are necessary or convenient for carrying out the functions referred to in this section.

(2) Without limiting the generality of Subsection (1), the functions of the Corporation include, subject to this Act—

- (a) to carry out and promote research or investigations into matters connected with urban development and human settlements; and

- (b) to purchase or otherwise acquire any property, or an interest in or in connection with any property; and
- (c) to prepare sites for the erection of dwellings and associated buildings; and
- (d) to erect dwellings and associated buildings on land acquired by the Corporation; and
- (e) to develop and maintain housing projects; and
- (f) to provide dwellings and associated buildings with equipment; and
- (g) to maintain dwellings and associated buildings vested in it; and
- (h)³ [*Repealed.*]
- (i) to make advances to eligible persons or approved applicants to enable them—
 - (i) to erect or purchase dwellings; or
 - (ii) to enlarge or improve dwellings already owned by them; or
 - (iii) to discharge existing mortgages, encumbrances or charges over dwellings already owned by them; and
- (j) to hire out plant and equipment to eligible persons for the purpose of the erection, enlargement or improvement of their dwellings; and
- (k) to carry out research into building materials and methods of construction, including the erection and maintenance of experimental dwellings or associated buildings; and
- (l) from time to time as prevailing circumstances require, to develop, by the Corporation or others, such land as the Corporation determines necessary or expedient for residential development; and
- (m) to make, provide or conduct reports and recommendations to the Minister or any other person or body in relation to human settlements or urban development as the Corporation considers necessary or appropriate; and
- (n) to promote orderly and economic urban development.

(3) Subsections (1) and (2) do not prevent the Corporation from requiring a tenant to accept responsibility for such repairs and maintenance of a minor nature as are specified in the tenancy agreement.

(4) In the exercise and performance of its functions, the Corporation may dispose of residential land at a price below its market value but having regard to the costs incurred and financial resources available for its continued operation.

³ Section 28(2)(h) never present.

29. AGENCY FUNCTIONS FOR GOVERNMENT ETC.

In addition to performing its functions under Section 28, the Corporation may—

- (a) act as an agent of the State or an instrumentality of the State in matters relating to residential development for its employees on such terms and conditions as to payment of commission, or otherwise, as are agreed on; and
- (b) perform and do such other acts, matters or things in relation to such housing on behalf of a body referred to in Paragraph (a) on such terms and conditions as are agreed on.

30. GENERAL POWERS OF THE CORPORATION.

The Corporation may do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

31. DELEGATION BY THE CORPORATION.

The Corporation may, by written instrument, delegate to a person all or any of its powers and functions under this Act (except the power to accept tenders and this power of delegation).

PART IV. – ASSISTANCE IN RELATION TO HOUSING.

Division 1.

Letting of Dwellings, etc.

Subdivision A. – Letting of Dwellings.

32. DETERMINATION OF ECONOMIC RENT.

(1) The Corporation shall determine an economic rent for each dwelling to be let.

(2) Subject to this Subdivision, the economic rent shall be calculated in accordance with Schedule 2.

33. VARIATION OF ECONOMIC RENT.

Subject to this Subdivision, the Corporation shall review the economic rent payable in respect of a dwelling after the tenancy has been in force for two years, and after the expiry of each two year period thereafter.

34. LIMITS OF VARIATION.

The Corporation may fix as the economic rent of any dwelling an amount that is greater or less than the amount that, in accordance with Schedule 2, should be fixed as the economic rent, but the total of all rents fixed as economic rents for all dwellings in the housing projects of the Corporation completed at the time when the economic rent is so fixed shall be not less than the amount that would be the total of all economic rents fixed for all those dwellings if fixed in accordance with Schedule 2.

35. LETTING OF DWELLINGS.

(1) Subject to this section, the Corporation may let a dwelling to an eligible person or an approved applicant.

(2) The letting shall be at the economic rent of the dwelling and in accordance with any conditions that the Corporation thinks proper.

(3) The Corporation shall not let a dwelling under this section to any person unless the Corporation is satisfied that he intends to use the dwelling as a home for himself or his dependants and for no other purpose.

Subdivision B. – Letting of Associated Buildings.

36. LETTING OF ASSOCIATED BUILDINGS.

(1) The Corporation may let an associated building.

(2) The letting shall be at such rent and in accordance with such conditions as the Corporation thinks proper.

Division 2.***Sale of Dwellings, etc.******Subdivision A. – General.*****37. SALE OF DWELLINGS.**

Subject to this Division, the Corporation may sell a dwelling vested in it to—

- (a) an eligible person; or
- (b) an approved applicant; or
- (c) a person who exercises the option offered to him under Section 38(1).

38. OPTIONS TO PURCHASE.

(1) After a tenancy agreement has been in force for two years between the Corporation and a tenant, the Corporation may, in its discretion, offer to—

- (a) the tenant; or
- (b) the spouse, widow or widower of the tenant; or
- (c) the tenant and his spouse as joint tenants; or
- (d) the tenant and his next of kin,

an option to purchase the dwelling the subject of the agreement at a purchase price specified in the option, subject to the conditions imposed by this Division.

(2) Where a tenant, under Division 1, of a dwelling becomes a purchaser under this section, either along or jointly with his spouse, he is entitled—

- (a) as from the date on which his tenancy of the dwelling commenced; or
- (b) if he has been a tenant of the Corporation in more than one dwelling without interruption and the Corporation so approves—from the date of first occupation of an earlier dwelling,

and subject to any terms specified in the option, to be credited in reduction of the sale price of the dwelling with an amount equal to that part of the economic rent that represents the repayment of the amount of the capital cost included in the amortization allowance in accordance with Section Sch.2.4.

(3) Where a tenant has not been credited with an amount in accordance with Subsection (2) and his spouse, widow or widower becomes a purchaser under this section, the spouse, widow or widower is entitled to be credited with the same allowance under Subsection (2) as the tenant would have been entitled to if he had purchased the dwelling.

(4) A contract of sale under this section may provide—

- (a) for the outright purchase; or
- (b) for the payment of the purchase price by instalments; or

- (c) for the payment of the purchase price to be secured—
 - (i) by mortgage, in the prescribed form, over the property in respect of which the advance is made; or
 - (ii) by any other security approved by the Corporation.

39. SALE OF ASSOCIATED BUILDINGS.

Subject to this Division, the Corporation may sell an associated building vested in it.

40. TERMS AND CONDITIONS OF SALE.

A sale under Section 37, 38 or 39 shall be in accordance with such conditions as are determined by the Corporation.

41. DETERMINATION OF SALE PRICE.

(1) Subject to Section 42, the sale price of a property sold under this Division shall be determined by the Corporation—

- (a) in accordance with a valuation of the property by a valuer approved by the Corporation; or
- (b) after considering such other evidence of the value of the property as in the opinion of the Corporation will enable it to fix a fair value.

(2) In determining the sale price under Subsection (1), no regard shall be had to any improvements to the property made by the purchaser or his spouse or any person claiming under or through the purchaser.

42. SALE OF SPECIAL CATEGORIES OF HOUSES.

(1) The Minister may, after receiving the approval of the National Executive Council, declare Special Categories of houses to which Section 41 does not apply.

(2) A declaration under Subsection (1) shall—

- (a) be published in the National Gazette; and
- (b) specify the terms and conditions under which the Special Categories of houses are to be sold.

Subdivision B. – Purchase through Mortgage.

43. PURCHASE BY INSTALMENTS.

Where a contract of sale under this Division provides for the payment of the purchase price or the balance of the purchase price by instalments, this Subdivision applies.

44. MORTGAGE.

A purchaser shall enter into a mortgage over the property in the prescribed form created in favour of the Corporation to secure the purchase price or the balance of the purchase price.

45. MAXIMUM PERIOD OF MORTGAGE.

The maximum period of a mortgage under this Subdivision shall not exceed 40 years.

46. APPROPRIATION OF MORTGAGE INSTALMENTS.

The Corporation shall appropriate from the amount paid towards mortgage instalments—

- (a) an amount to cover interest on the amount of the purchase price outstanding from time to time; and
- (b) an amount, not exceeding an amount equal to the prescribed percentage of the amount of the purchase price outstanding, on account of administrative expenses; and
- (c) an amount equal to the total of the amounts (if any) expended by the Corporation on rates, taxes, insurance, maintenance and any other outgoings in respect of the property,

and shall appropriate the remainder of the amount towards the purchase price.

47. TRANSFER.

Subject to Section 46, the Corporation shall, in consideration of the execution of the mortgage by the purchaser, and at the expense of the purchaser, transfer the property to the purchaser, subject to the mortgage.

48. ADDITIONAL PAYMENTS.

(1) On any day on which a mortgage instalment becomes due and payable the purchaser may, if he has paid to the Corporation all amounts then due under the mortgage, pay to the Corporation an additional amount, being a kina or a multiple of a kina, in reduction of the purchase price.

(2) After appropriating any outstanding amounts expended in connection with the property for the matters referred to in Section 46(c), the Corporation shall appropriate the remainder of the additional amount towards the purchase price.

Division 3.

Advances for Housing Purposes.

Subdivision A. – General.

49. ADVANCES FOR HOUSING PURPOSES.

(1) For purposes of this Division, “advances” means funds lent by the Corporation for approved purposes under this Division, and includes provision of other services, other than monetary advances, by the Corporation.

(2) The Corporation may make advances, by instalments or otherwise, to an eligible person or to an approved applicant—

- (a) to erect a dwelling or to complete a partially-erected dwelling on land owned by him; or
- (b) to acquire land for the purpose of erecting a dwelling; or
- (c) to purchase an existing dwelling or a partially-erected dwelling; or
- (d) to enlarge or improve a dwelling on land owned by him; or
- (e) to discharge a mortgage, encumbrance or charge on or over land owned by him.

50. SECURITY FOR ADVANCES.

An advance under this Division shall be secured—

- (a) by a mortgage in the prescribed form over the property in respect of which the advance is made; or
- (b) by any other security approved by the Corporation.

51. MAXIMUM AMOUNT OF ADVANCE.

An advance or the aggregate of the advances under this Division shall not exceed—

- (a) a sum equal to 90% of the value of the property, as estimated by the Corporation, assuming that the advance has been applied for the purposes for which it was made; or
- (b) the prescribed amount,

whichever is the less.

52. MAXIMUM PERIOD FOR REPAYMENT.

The maximum period allowed for the repayment of an advance under this Division shall not exceed 30 years.

53. INTEREST ON ADVANCES.

The amount of an advance under this Division from time to time outstanding bears interest at the prescribed rate.

54. CONDITIONS OF ADVANCES.

An advance under this Division is subject to such conditions as the Corporation thinks proper.

55. APPLICATION OF ADVANCES.

(1) An advance, or any portion of an advance, under this Division shall not be applied to a purpose other than the purpose for which it was made.

(2) Where a person contravenes Subsection (1), the Corporation may, notwithstanding anything in this Act or in the agreement for the advance, sue to recover the total of the advances outstanding, together with interest at the prescribed rate, as a debt due to the Corporation.

Subdivision B. – Repayment by Instalments.**56. REPAYMENT BY INSTALMENTS.**

Where an agreement for an advance under this Division provides for the repayment of the advance and interest by instalments, this Subdivision applies.

57. APPROPRIATION OF INSTALMENTS.

The Corporation shall appropriate from the amount paid in instalments—

- (a) an amount to cover interest on the amount of the advance outstanding from time to time; and
- (b) an amount, not exceeding an amount equal to the percentage prescribed for the purposes of Section 46(b) of the amount of the advance outstanding, on account of administrative expenses,

and shall appropriate the remainder of the amount in reduction of the amount of the advance then outstanding.

58. ADDITIONAL PAYMENTS.

(1) On any day on which an instalment under an agreement for an advance becomes due and payable, the person liable to pay the instalment may, if he has paid to the Corporation all amounts then due by way of instalments and interest, pay to the Corporation an additional amount, being a kina or multiple of a kina, in reduction of the amount of the advance then outstanding.

(2) The Corporation shall appropriate any additional amount paid under Subsection (1) in reduction of the amount of the advance from time to time outstanding.

Division 4.

Assistance to Home Builders.

59. ACQUISITION OF PLANT AND EQUIPMENT.

The Corporation may purchase, hire or otherwise acquire and maintain such items of plant and building equipment as would in its opinion be of assistance to an eligible person desiring to erect a dwelling or improve a dwelling already owned by him.

60. HIRE OF PLANT AND EQUIPMENT.

Subject to this Division, the Corporation may, on such terms and conditions as are agreed on between an eligible person and the Corporation, hire to that eligible person equipment or plant hired by or the property of the Corporation.

61. ADVICE AND ASSISTANCE.

The Corporation may, on such terms and conditions as are agreed on between a person desiring to erect a dwelling and the Corporation, assist that person—

- (a) by the provision of technical or professional advice; and
- (b) by the preparation of plans, details and specifications.

62. REMISSION OF CHARGES.

Notwithstanding this Division, the Corporation may, in any particular case or class of cases, remit, in whole or in part, a charge fixed under this Division.

Division 5.

Housing Research.

63. HOUSING RESEARCH.

The Corporation may, by itself or in co-operation with any other person or body, engage in research into matters in connection with—

- (a) the planning and construction of residential buildings suitable for the country; or
- (b) the planning and construction of other types of buildings; or
- (c) urban development and human settlements.

64. PROVISION OF FUNDS FOR RESEARCH.

With the consent of the Minister or his delegate, the Corporation may provide funds for any person or body to engage in research in relation to the matters referred to in Section 63.

Division 6.

Miscellaneous.

65. RESTRICTION OF TRANSFER, ETC.

Where, without the consent in writing of the Corporation, a person purports to—

- (a) sell or contract to sell; or
- (b) mortgage; or
- (c) lease or sub-lease; or
- (d) transfer; or
- (e) assign,

any property in which the Corporation has an interest under this Part, the sale, contract, mortgage, lease, sub-lease, transfer or assignment is void and of no effect.

66. POWER OF MANAGEMENT OF SECURED PROPERTY.

Where the Corporation holds any property or business as security for a loan or advance and the property or business falls into the hands of the Corporation, the Corporation may maintain, repair or improve the property or carry on the business until it can, in its discretion, dispose of the property or business in the best interests of the Corporation.

PART V. – OFFENCES.

67. CORRUPTION.

(1) In this section, “**bribe**” includes the giving, conferring or procuring of any property or benefit of any kind in respect of–

- (a) any act done or to be done; or
- (b) any forbearance observed or to be observed; or
- (c) any favour or disfavour shown or to be shown,

in relation to the affairs or business or the Corporation or to any matter under this Act.

(2) A member, officer or employee of the Corporation who obtains or attempts to obtain a bribe is guilty of an offence.

(3) A person who bribes or attempts to bribe a member, officer or employee of the Corporation is guilty of an offence.

Penalty: Imprisonment for a term not exceeding two years.

PART VI. – MISCELLANEOUS.

68. PURPOSES OF THE CORPORATION TO BE PUBLIC PURPOSE.

The purposes of the Corporation are a public purpose within the meaning of any law.

69. PROOF OF CERTAIN MATTERS.

In any proceedings by or against the Corporation, proof is not required, unless evidence is given to the contrary, of–

- (a) the constitution of the Corporation; or
- (b) a resolution of the Corporation; or
- (c) the appointment of a member, officer, servant or agent of the Corporation; or
- (d) the presence of a quorum at a meeting at which a determination is made or an act done by the Corporation.

70. 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.

71. AUTHENTICATION OF DOCUMENTS.

Any document requiring authentication by the Corporation is sufficiently authenticated without the seal of the Corporation if signed by the Managing Director.

72. APPOINTMENT OF ATTORNEYS.

(1) The Corporation may, by instrument under its seal, appoint a person to act as its attorney outside the country for the purpose of doing anything that the Corporation itself might lawfully do.

(2) A person appointed under Subsection (1) may, on behalf of and in the name of the Corporation, do any act, exercise any power and perform any function that he is authorized by the instrument to do, exercise or perform.

73. COMPENSATION.

(1) Where loss or damage is suffered by any person by reason of the exercise, by on or behalf of the Corporation, of a power conferred by or under this Act, compensation for the loss or damage is payable to that person by the Corporation.

(2) Subject to Subsection (3), the amount of compensation payable under Subsection (1) is as determined by the Minister.

(3) A person aggrieved by a determination of the Minister under Subsection (2) may appeal to the National Court.

74. RECOVERY OF MONEY DUE.

Any money due to the Corporation under this Act may be recovered by the Corporation as a debt.

75. PROTECTION FROM PERSONAL LIABILITY.

A member of the Board or an officer or employee or 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 operations of the Corporation or for the purposes of the Corporation.

76. ANNUAL REPORT.

The Corporation shall, as soon as possible between 1 January and 28 March of each year prepare and forward a report to the National Parliament of its work and activities for the preceding 12 months.

77. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act prescribing all matters that 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.

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PART VII. – REPEAL.

78. REPEAL.

The *Housing Commission Act* (Chapter 79) is repealed.

PART VIII. – TRANSITIONAL AND SAVING.

79. ACTIONS ETC., NOT TO ABATE.

Where immediately before the commencement of this Act, any action, arbitration or proceeding was pending or existing by or against a person or body under the repealed Act, it does not, on the commencement of this Act, abate or discontinue or in any way be affected by a provision of this Act but it may be prosecuted, continued and enforced by, against or in favour of the person or body as if this Act had not been made.

80. ACCOUNTS.

All monies immediately before the commencement of this Act, standing to the credit of, and on accounts opened by the authority of the repealed Act, are, on the commencement of this Act, transferred to and stand to the credit of accounts opened under the authority of this Act.

81. TRANSFER OF ASSETS AND LIABILITIES.

All assets and liabilities which, immediately before the commencement of this Act, were owned or held by the Housing Commission under the repealed Act are, on the commencement of this Act, transferred to and become assets and liabilities of the Corporation.

82. REGISTRATION OF TITLE OF LAND.

(1) Where land the title to which is registered under the *Land Registration Act 1981* or any former Acts and registered in the name of the Housing Commission, is, on the commencement of this Act, transferred from the Housing Commission to the Corporation.

(2) The Registrar of Titles shall—

- (a) on application by the Corporation; and
- (b) on production of the relevant State Lease or Certificate of Title or such deeds evidencing title to ownership; and
- (c) without formal transfer,

register the Corporation as owner of the land.

(3) No stamp duty or other duty, tax or fee is payable on a registration made under Subsection (2).

83. CONTRACTS.

All contracts and agreements entered into, made with or addressed to the State under or through the Department of Housing or the Housing Commission, in so far as they relate to the functions of the Corporation under this Act, are, to the extent that they were immediately before the commencement of this Act, binding on and of

full force and effect against or in favour of the Department of Housing or the Housing Commission are, on that commencement binding on and of full force and effect against or in favour of the Corporation as fully and effectually as if, instead of the State or the Housing Commission, the Corporation had been a party to them or bound by them or entitled to the benefit of them.

84. TRANSFER OF STAFF.

(1) The person who, immediately before the commencement of this Act, held the position of Commissioner under the repealed Act, shall, on the commencement of this Act, hold office of the Managing Director, and, subject to the *Salaries and Conditions Monitoring Committee Act 1988*, on the same terms and conditions.

(2) A person who, immediately before the commencement of this Act held an office or appointment in the Housing Commission under the repealed Act, shall on the commencement of this Act, hold a similar office or appointment under this Act and on the same terms and conditions until appointments and terms and conditions of appointments are determined under Part II of this Act.

(3) A person who, immediately before the commencement of this Act, held an office or appointment in the Department of Housing under the *Public Services (Management) Act 1995*, shall on the commencement of this Act, hold a similar office or appointment under this Act until appointments and terms and conditions of appointments and determined under Part II of this Act.

Note The *Public Services (Management) Act 1986* was repealed and replaced by the *Public Services (Management) Act 1995*.

(4) A person to whom Subsection (2) and (3) applies who, after the commencement of this Act, is not appointed or, if appointed, refuses to take up such appointment under Part II of this Act, may be entitled to apply for and shall receive such retrenchment and other entitlements (if any) as may be determined under this Act in the case of a person to whom Subsection (2) applies, or under the *Public Services (Management) Act 1995* in the case of a person to whom Subsection (3) applies.

Note The *Public Services (Management) Act 1986* was repealed and replaced by the *Public Services (Management) Act 1995*.

85. APPLICATION OF ACTS, ETC.

Where—

- (a) any Act, or subordinate enactment, other than this Act; or
- (b) any document or instrument whenever made or executed,

contains a reference, express or implied, to the Housing Commission or the Department of Housing, that reference shall, on the commencement of this Act, except where the context otherwise requires, be read and construed and has effect as a reference to the Corporation.

SCHEDULE 1

Sec. 23.

<i>Provision</i>	<i>Modification, etc.</i>
Section 53	Does not apply.
Section 52	Does not apply.
Section 58	Does not apply.
Section 56	Does not apply.
Section 51	Applies as if the requirement of submission of estimates, etc., no later than three months before the end of the financial year were a requirement of submission before 30 November in each year.
Section 63	Applies as if the reference to the Minister were a reference to the Minister administering this Act.
Section 59	The specified sum is K1,000.00.
Section 61	Applies as if the reference to K100,000.00 were a reference to K80,000.00.
Section 62	Applies as if the reference to the Minister were a reference to the Minister administering the Act.

SCHEDULE 2 – BASIC ECONOMIC RENT.

PART I – PRELIMINARY.

Sch. 2.I.1. Interpretation of Schedule 2.

In this Schedule—

“**the capital cost**”, in relation to a dwelling, means the capital cost calculated in accordance with Part III. of this Schedule;

“**the basic economic rent**” means the economic rent calculated for the purpose of Section 32.

PART II – CALCULATION GENERALLY.

Sch. 2.II.2. Basic economic rent.

(1) The basic economic rent of a dwelling is $\frac{7}{365}$ ths of the annual rent, calculated in accordance with Section Sch.2.3.

(2) The basic economic rent shall, if the amount otherwise fixed in accordance with this Schedule is not a multiple of 5t, be the next higher amount that is such a multiple.

Sch. 2.II.3. Annual rent.

For the purpose of this Schedule, the annual rent of a dwelling is the sum of the following annual amounts and allowances—

- (a) amortization allowance, calculated in accordance with Section Sch.2.4; and
- (b) maintenance allowance, as provided for by Section Sch.2.5; and
- (c) the rent of the land, as provided for by Section Sch.2.6; and
- (d) rates and taxes, as provided for by Section Sch.2.7; and
- (e) insurance, as provided for by Section Sch.2.8; and
- (f) an allowance for vacancies and defaults, as provided for by Section Sch.2.9; and
- (g) administrative costs, as provided for by Section Sch.2.10.

Sch. 2.II.4. Amortization allowances.

(1) The amortization allowance shall provide for—

- (a) payment of interest at a rate determined by the Corporation, with the approval of the Minister, on the capital cost; and
- (b) recoupment of the amount of the capital cost.

(2) The amortization allowance shall be so computed that the capital cost, together with interest on it or on any outstanding balance of it, is recouped by means of 40, or such lesser number as is determined by the Corporation, equal annual instalments throughout the amortization period.

Sch. 2.II.5.Maintenance allowance.

(1) The amount to be included for maintenance is the amount, as fixed by the Corporation from time to time, as being an amount that, in the opinion of the Corporation, is sufficient to provide for reasonable maintenance charges likely to be incurred in the amortization period.

(2) Except when varied by the Corporation, the amount fixed under Subsection (1) shall be constant throughout the amortization period.

Sch. 2.II.6.Land rent.

The amount to be included for the rent of the land is the annual rent payable by the Corporation under the lease (if any) of the land on which the dwelling is situated.

Sch. 2.II.7.Rates and taxes.

The amount to be included for rates and taxes is such amount as the Corporation from time to time thinks sufficient to meet any amounts that the Corporation is liable to pay in respect of—

- (a) local government and other rates or charges; and
- (b) other taxes,

imposed on the dwelling.

Sch. 2.II.8.Insurance.

The amount to be included for insurance is such amount as the Corporation from time to time thinks sufficient to provide for the purpose.

Sch. 2.II.9.Vacancies and defaults.

The amount to be included for vacancies and defaults is an amount equal to 5% of the total of the amounts included under Section Sch.2.4 to Sch.2.8 (inclusive), or such other amount as is fixed from time to time by the Corporation.

Sch. 2.II.10.Administrative costs.

The amount to be allowed for administrative costs is such amount as is fixed from time to time by the Corporation.

PART III – CAPITAL COSTS.**Sch. 2.III.11. Capital cost of housing projects.**

For the purposes of this Part, the capital cost of a housing project carried out by the Corporation is the sum of—

- (a) the amounts expended by the Corporation in—
 - (i) the construction of the dwelling included in the project; and
 - (ii) the carrying out of any improvements on the land included in the project; and
- (b) interest on the amounts referred to in Paragraph (a) that is paid or payable by the Corporation during the course of construction; and
- (c) any costs incurred or assessed by way of fees paid or payable by the Corporation to architects, clerks of works or other persons in—
 - (i) the design of the project or the dwellings included in the project; or
 - (ii) the supervision of the construction of the dwelling; or
 - (iii) the carrying out of any other works necessary for the preparation and completion of the project; and
- (d) any administrative cost incurred or assessed by the Corporation—
 - (i) in the carrying out of the project or the construction of the dwellings included in the project; or
 - (ii) in obtaining leases of the land on which the project is carried out; and
- (e) the amount paid or payable by the Corporation, from the time of the acquisition by it of the land until the completion of the project, for—
 - (i) rent, survey fees and improvements; and
 - (ii) Local-level Government, water, sewerage and other rates and taxes,
 - in respect of the land on which the project is carried out; and
- (f) the cost incurred by the Corporation for draining, or otherwise making suitable for the purposes of the project, any land included in the project; and
- (g) interest paid or payable by the Corporation on the amounts referred to in Paragraphs (c), (d) and (f).

Sch. 2.III.12. Capital cost of dwellings in completed projects.

- (1) For the purposes of this section—

- (a) all dwellings in a housing project that—
- (i) are of the same kind of construction; and
 - (ii) provide substantially the same kind of accommodation, shall be treated as being of the same class; and
- (b) a single dwelling in the project may constitute a class; and
- (c) all dwellings in the project may be of a single class.

(2) The capital cost of a dwelling of any given class in a housing project is the amount calculated from the formula.

$$\frac{A}{B} + \frac{C}{D}$$

Where—

“A” = the sum of the amounts referred to in Section Sch.2.11(a) and (b) that relate to the construction of all dwellings of that class in the project.

“B” = the number of dwellings of that class included in the project.

“C” = the sum of the amount referred to in Section Sch.2.11(c) to (g) (inclusive) that relate to the project.

“D” = the total number of dwellings included in the project.

Sch. 2.III.13.Capital cost of dwellings in uncompleted projects, etc.

If it is necessary for the purposes of this Schedule to ascertain the capital cost of a dwelling included in a housing project and for any reason the cost cannot be ascertained exactly—

- (a) the Corporation shall make an estimate of the probable capital cost; and
- (b) the actual capital cost shall be ascertained as soon as may be and if it differs from the estimated cost the basic economic rent shall be varied accordingly as from the date on which the actual cost is ascertained.

Sch. 2.III.14.Capital cost of dwellings not in projects.

For the purposes of this part the capital cost of a dwelling not included in a housing project is the amount paid or payable by the Corporation in respect of the erection or acquisition by the Corporation of the dwelling and the land on which it is situated.