

No. 21 of 1995.

Public Finances (Management) Act 1995.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 21 of 1995.

Public Finances (Management) Act 1995.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Public Finances (Management) Act 1995,

Being an Act to make provision for the management of public finances (including those relating to Provincial Governments and Local-level Governments as required by the *Organic Law on Provincial Governments and Local-level Governments*) and to repeal various Acts and for related matters,

MADE by the National Parliament to come into operation—

- (a) insofar as relating to Part IX (and such other provisions as are directly relevant to the operation of Part IX)—in accordance with the coming into operation of the *Organic Law on Provincial Governments and Local-level Governments*; and
- (b) insofar as relating to the remainder—in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

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

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*; and
- (c) the right to freedom of information conferred by Section 51 of the *Constitution*,

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

2. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**accountable officer**” has the meaning given to it in Section 6;

“**accounts and records**” include any accounts, deeds, writings and documents, and other records of information, whether compiled, recorded or stored by microfilm or electronic process or otherwise;

“**approved bank**” means a bank carrying on business in the country and approved by the Minister, by notice in the National Gazette, for the purposes of this Act, or in relation to a public body to which the provisions of Part VIII apply, for the purposes of any provision of Part VIII;

“**Board**” means a Supply and Tenders Board established under Section 39;

“**the Consolidated Revenue Fund**” means the fund established by Section 10;

“**constituent law**”, in relation to a public body, means the Act by or under which the public body is established or carries on its operations;

“**debt charges**” include interest, sinking fund charges and the repayment or amortization of debts;

“**Departmental Head**” includes those persons who are Heads of Departments of the Public Service and those persons who are deemed, for the purpose of the *Public Services (Management) Act 1995*, to be Departmental Heads;

“**finance inspector**” means an officer appointed a finance inspector under Section 8;

“**Financial Instructions**” means the Financial Instructions authorized by Section 117;

“**fiscal year**”, in relation to a public body to which Part VIII applies, means the year ending on 31 December in each year, or, where some other date is specified in or under its constituent law, that date, and otherwise means the year ending on 31 December;

¹“**General Revenue Fund**” means a fund established under Section 10(2)(b)(i) and, in relation to a Provincial Government or a Local-level Government established under the Organic Law on Provincial Governments and Local-level Governments, means the General Revenue Fund established for that Provincial Government or Local-level Government;

“**loans moneys**” means any moneys borrowed by the State in accordance with or as authorized by any law;

¹ Section 2 Amended by No. 12 of 2003, s. 1.

“national tenderer” means an automatic citizen and includes a firm or company that is, in the opinion of the Board, wholly or mainly owned or controlled by automatic citizens;

“officer” means—

- (a) an officer appointed to the Public Service under the *Public Services (Management) Act 1995*; or
- (b) a person employed to render temporary or casual assistance in the Public Service under the *Public Services (Management) Act 1995*; or
- (c) the Commissioner or an Associate Commissioner of the Teaching Service; or
- (d) a member of the Teaching Service; or
- (e) a person who holds an office that—
 - (i) is constituted by or under an Act; and
 - (ii) is for the time being declared by notice under Section 1(5) of the *Interpretation Act 1975*;

“property” means real and personal property;

“Provincial and District Treasury” means a Provincial and District Treasury established under Section 112(1) of the *Organic Law on Provincial Governments and Local-level Governments*;

“Provincial Treasurer” means a Provincial Treasurer appointed under Section 112(2) of the *Organic Law on Provincial Governments and Local-level Governments*;

²³**“the Public Account”** means the Public Account established by Section 10 and, in relation to a Provincial Government or a Local-level Government established under the Organic Law on Provincial Government and Local-level Government, means the General Revenue Fund and Trust Fund established for that Provincial Government or Local-level Government;

⁴**“public body”** means —

- (a) a body, authority or instrumentality (corporate or unincorporate) established by or under an Act or a Constitutional Law; and
- (b) a body, authority or instrumentality incorporated under the *Companies Act 1997* where and to the extent that—

² Section 2 Amended by No. 12 of 2003, s. 1; Section 2 (definition of “Small Contracts Award Board”) repealed by the *Public Finances (Management) (Amendment) Act 1998* (No. 14 of 1998), s1; Section 2 Amended by No. 12 of 2003, s. 1.

³ Section 2 Amended by No. 12 of 2003, s. 1.

⁴ Section 2 (definition of “public body”) amended by *Public Finances (Management) (Amendment No. 2) Act 1996* (No. 25 of 1996); amended by *Public Finances (Management) (Amendment) Act 1999* (No 6 of 1999).

- (i) the Memorandum and Articles of Association of that body, authority or instrumentality provide; or
- (ii) an Act other than this Act provides,
that this Act shall apply to that body, authority or instrumentality,

other than—

- (c) the Auditor-General or the Office of the Auditor-General; or
- (d) the Privatization Commission established by the *Privatization Act 1999*;
- (e) a body, authority or instrumentality incorporated under the *Companies Act 1997* other than one to which Paragraph (b) relates;

“public moneys” includes all revenue and loans, trust and other moneys raised or received, and all bonds, debentures and other securities received—

- (a) by any person on behalf of the State; or
- (b) by an officer in his capacity as such on behalf of any other person;

“public office-holder” means—

- (a) a member of any of the State Services or of a provincial service; or
- (b) any other constitutional office-holder; or
- (c) the holder of any office or position established by statute for administrative or governmental purposes; or
- (d) the holder of any other office or position declared by a statute to be a public office;

“stores” means goods and chattels of any kind that are or are intended to be the property of, or in the possession or under the control of, the State;

“this Act” includes the Regulations, Rules and Financial Instructions;

“Trust Account” means a Trust Account established under Section 15;

“Trust Fund” means the fund established by Section 10(2) and, in relation to a Provincial Government or a Local-level Government established under the Organic Law on Provincial Governments and Local-level Governments, means the Trust Fund established for that Provincial Government or Local-level Government;

⁵ Section 2 Amended by No. 12 of 2003, s. 1.

PART II. – RESPONSIBILITY FOR FINANCIAL MANAGEMENT.

3. RESPONSIBILITIES OF THE MINISTER.

(1) The Minister is responsible for—

- (a) the supervision of the finances of the State so as to ensure that a full accounting is made to the Parliament of all transactions involving public moneys; and
- (b) the supervision of the finances of public bodies; and
- (c) the formulation of the National Budget and overseeing its implementation on behalf of the National Government.

(2) As soon as practicable after the end of the first, second and third quarters of each fiscal year, the Minister shall publish in the National Gazette a summarized statement of the receipts and expenditure of the Public Account during the fiscal year up to the end of that quarter.

(3) As soon as practicable after the end of each fiscal year, the Minister shall cause to be prepared a detailed statement of the receipts and expenditure of the Public Account during the fiscal year, and shall send it to the Auditor-General.

4. RESPONSIBILITIES OF THE DEPARTMENTAL HEAD OF THE DEPARTMENT RESPONSIBLE FOR FINANCIAL MANAGEMENT.

(1) The Departmental Head of the Department responsible for financial management has control and direction of all matters relating to the management of the financial affairs of the State, subject to specific directions given to him by the Minister.

(2) In the implementation of the functions specified in Subsection (1), the Departmental Head of the Department responsible for financial management may consult with the Departmental Heads of the Department of the Prime Minister, the Department responsible for planning matters and the Department responsible for personnel management.

(3) The Departmental Head of the Department responsible for financial management may require Departmental Heads to submit financial reports on such matters and at such intervals as he determines.

(4) A Departmental Head who fails to submit a financial report when required to do so under Subsection (3) is guilty of an offence under Section 112.

5. RESPONSIBILITIES OF HEADS OF DEPARTMENTS.

(1) Each Departmental Head is responsible for ensuring that, in relation to the Department of which he is Head—

- (a) the provisions of this Act are complied with; and

- (b) all accounts and records relating to the functions and operations of the Department are properly maintained; and
- (c) all necessary precautions are taken to safeguard the collection and custody of public moneys; and
- (d) all expenditure is properly authorized and applied to the purposes for which it is appropriated; and
- (e) there is no overcommitment of funds and a review is undertaken each month to ensure that there is no over-expenditure or overcommitment and the collection of public moneys is according to approved plans and estimates; and
- (f) all expenditure is incurred with due regard to economy, efficiency and effectiveness and the avoidance of waste; and
- (g) all necessary precautions are taken to safeguard stores and other property of the State; and
- (h) any fee, charge or tax imposed by legislation for which the Department is responsible is collected promptly and to the fullest extent; and
- (i) any fee, charge or tax imposed by legislation for which the Department is responsible is reviewed at least once in each year in order to establish—
 - (i) whether the level of such fee, charge or tax is adequate; and
 - (ii) whether such fee, charge or tax should be increased and, if so, by what amount,

and that financial reports on reviews and other such matters are submitted to the Departmental Head of the Department responsible for financial management in the format specified in the Financial Instructions; and
- (j) information required by the Public Accounts Committee is submitted to that Committee accurately and promptly; and
- (k) advice on financial management is given to the Minister politically responsible for the Department; and
- (l) proper estimates in respect of collection and expenditure of public moneys are prepared in a form specified in the Financial Instructions; and
- (m) as soon as practicable after the end of each quarter of each fiscal year he submits to the Departmental Head of the Department responsible for financial management a report on financial management in a form specified in the Financial Instructions.

(2) The responsibility of a Departmental Head under Subsection (1) is not derogated or reduced by reason of any delegation of functions by him to another person.

(3) A Departmental Head is liable to imposition of surcharge under Section 102 and levy of penalty for an offence under Section 112 in addition to disciplinary action under the Public Service General Orders for improper discharge of responsibility under Subsection (1).

6. ACCOUNTABLE OFFICERS.

(1) A person who—

(a) is an officer; or

(b) authorizes the collection or payment of public moneys or accounts for stores, whether or not he is an officer,

is an accountable officer for the purposes of this Act.

(2) An accountable officer shall comply with the provisions of this Act in respect of all matters for which he is responsible and for all public moneys and stores in his possession or under his control, and shall duly account for them.

7. RESPONSIBILITY OF PUBLIC OFFICE-HOLDER IN RELATION TO COLLECTION OF REVENUE.

It is the duty of each public office-holder responsible for the collection of revenue to ensure that such revenue is collected promptly and to the fullest extent and paid into the Public Account forthwith.

8. FINANCE INSPECTORS.

The Departmental Head of the Department responsible for financial management may appoint an officer or person to be a finance inspector for the purposes of this Act.

9. POWERS OF DEPARTMENTAL HEAD AND FINANCE INSPECTORS.

The Departmental Head of the Department responsible for financial management or a finance inspector has power—

(a) to obtain full and free access at all reasonable times to all accounts and records of accountable officers that relate, directly or indirectly, to—

(i) the collection, receipt, expenditure or issue of public money; and

(ii) the receipt, custody, disposal, issue or use of stores or other property of the State,

and inspect and inquire into and call for any information arising from those accounts and records; and

(b) where he has reason to believe that an accountable officer has been or may have been in breach of this Act or the *Organic Law on Provincial Governments and Local-level Governments*, summarily to suspend that accountable officer from all financial duties and responsibilities.

PART III. – PUBLIC ACCOUNT.**10. THE PUBLIC ACCOUNT.**

⁶(1) There shall be a Public Account, for each of –

- (a) the National Government; and
- (b) a Provincial Government or a Local-level Government established under the Organic Law on Provincial Governments and Local-level Governments.

(2) A Public Account established by Subsection (1) shall consist of –

- (a) in the case of the National Government –
 - (i) the Consolidated Revenue Fund; and
 - (ii) the Trust Fund; and
- (b) in the case of a Provincial Government or a Local-level Government –
 - (i) a General Revenue Fund; and
 - (ii) a Trust Fund.

11. KEEPING OF PUBLIC ACCOUNT.

(1) Subject to this Act, public moneys shall be kept in such bank or banks as the Departmental Head of the Department responsible for financial management (subject to any specific directions of the Minister) directs, but where banking facilities do not exist public moneys shall be kept in such manner as the Departmental Head of the Department responsible for financial management (subject to any specific directions from the Minister) directs.

(2) No bank account may be opened or operated without the consent in writing of the Departmental Head of the Department responsible for financial management.

12. INVESTMENT OF PUBLIC ACCOUNT.

(1) The Departmental Head of the Department responsible for financial management (subject to any specific directions from the Minister) may invest moneys forming part of the Public Account and not immediately required–

- (a) in the securities of any money market towards which the Central Bank acts as lender of last resort; or
- (b) on deposit in a bank; or
- (c) in any securities of, or guaranteed by, the State; or
- (d) in the case of any moneys standing to the credit of the Trust Fund, in accordance with any trust instrument relating to the investment of those moneys; or

⁶ Section 10 Substituted by No. 12 of 2003, s. 2.

(e) in any other manner approved by the Head of State, acting on advice.

(2) Investment of moneys out of the Trust Fund shall be deemed to be part of the Trust Fund, but subject to anything to the contrary in any law or in a trust instrument relating to any such moneys, the interest on any such investments shall be paid into the Consolidated Revenue Fund.

(3) Investment of moneys out of the Consolidated Revenue Fund, and the interest on any such investments, form part of the Fund.

(4) Investment of any moneys standing to the credit of the Trust Fund or of the Consolidated Revenue Fund shall be made only on the authority of the Departmental Head of the Department responsible for financial management.

13. PAYMENTS INTO THE CONSOLIDATED REVENUE FUND.

(1) All public moneys including loan moneys but not including—

- (a) moneys payable under any law into or on account of the Trust Fund; or
- (b) amounts advanced to a Trust Account by an overseas agency, by way of either loan or grant, for the purpose of funding an agreed project,

shall be paid into the Consolidated Revenue Fund.

(2) All moneys that are—

- (a) deposited with a bank; or
- (b) invested under Section 12; or
- (c) advanced in accordance with this Act,

out of or on behalf of the Consolidated Revenue Fund shall be deemed to be part of that fund for the purposes of this Act.

(3) There shall be paid to the Consolidated Revenue Fund all amounts payable to it under this Act or any other law.

14. PAYMENTS OUT OF CONSOLIDATED REVENUE FUND.

(1) No moneys shall be paid out of the Consolidated Revenue Fund except—

- (a) moneys appropriated under an Act; or
- (b) moneys deemed to have been appropriated under an Act; or
- (c) to meet expenditure that is charged on the Consolidated Revenue Fund by a law; or
- (d) for the payment of a refund of revenue required or permitted by any law where specific authority for the payment does not exist; or
- (e) for the payment of revenue refunds provided for under any income tax, customs, stamp duty or other revenue law; or
- (f) subject to Subsection (2), if at the beginning of a fiscal year the Parliament has not made provision for public expenditure or

expenditure by the Parliament or the Judiciary for their respective services for that year and—

- (i) in the case of the National Executive—the Head of State, acting on advice; or
- (ii) in the case of the Parliament—the Speaker; or
- (iii) in the case of the Judiciary—the Chief Justice,

has authorized the issue and expenditure of moneys out of the Consolidated Revenue Fund for the purposes of government services, the services of the Parliament or the services of the Judiciary respectively.

(2) The amounts which may be authorized for the National Executive, the Parliament or the Judiciary respectively under Subsection (1)(f) shall not exceed in total one third of the budgeted expenditure during the immediately preceding fiscal year by the National Executive, the Parliament or the Judiciary respectively.

15. ESTABLISHMENT OF TRUST ACCOUNTS.

Within the Trust Fund, Trust Accounts may be established as directed by the Minister or prescribed by any other law—

- (a) to receive moneys held by the State as trustee; or
- (b) to receive the proceeds of commercial or trading activities carried on by any arm, agents or instrumentality of the State; or
- (c) for such other purpose as may be approved by the Minister.

16. PAYMENTS INTO TRUST ACCOUNTS.

(1) There shall be paid to the credit of a Trust Account—

- (a) all moneys appropriated for the purpose of the Account; and
- (b) all moneys received from any dealing with any articles purchased or produced, or for work paid for, with moneys standing to the credit of the Account; and
- (c) all moneys paid by any person for the purposes of the Account; and
- (d) amounts appropriated as Government contribution to a project which is partly funded by an international agency, whether by way of loan or grant.

(2)⁷ ⁸Subject to Subsection (1), transfers of funds from Consolidated Revenue Fund to Trust Fund are prohibited unless a special transfer is authorized by an Appropriation Act.

⁷ Section 16(2) repealed and replaced by the *Public Finances (Management) (Amendment) Act 1998* (No. 14 of 1998), s2.

17. PAYMENTS OUT OF TRUST ACCOUNTS.

Moneys may be paid out of a Trust Account only—

- (a) for the purposes of the Account or as authorized by law; and
- (b) if a sufficient credit is available in the Account.

18. MONEYS AT CREDIT OF TRUST ACCOUNT NOT TO LAPSE.

Moneys standing to the credit of a Trust Account at the end of a fiscal year shall not lapse at the end of that fiscal year.

19. MANAGEMENT OF TRUST ACCOUNT.

(1) The Departmental Head of the Department responsible for financial management shall notify each Departmental Head of the Trust Accounts for which he is responsible.

(2) A Departmental Head of a Department responsible for a Trust Account shall ensure the proper management and operation of that account.

(3) In relation to a Trust Account for which he is responsible, the Departmental Head of the Department shall, before the commencement of each fiscal year, submit to the Departmental Head of the Department responsible for financial management, in the prescribed form, an estimate of receipts and payments expected to be made into and withdrawn from that Account.

(4) A Departmental Head of a Department responsible for a Trust Account—

- (a) may authorize payment out of that Account in accordance with the estimate of receipts and payments submitted under Subsection (3) and agreed by the Departmental Head of the Department responsible for financial management; and
- (b) may delegate, either conditionally or unconditionally, the power to authorize withdrawals under Paragraph (a); and
- (c) shall maintain such records pertaining to the Account as are required by the Departmental Head of the Department responsible for financial management and shall submit to him within seven days after the end of each month, details of transactions on the account; and
- (d) shall, at the end of each fiscal year, submit to the Departmental Head of the Department responsible for financial management, a statement of the account for the preceding year.

(5) The Departmental Head of the Department responsible for financial management may—

⁸ Section 16(2) repealed and replaced by the *Public Finances (Management) (Amendment) Act 1998* (No. 14 of 1998), s2.

(a) suspend the operation of a Trust Account where the provisions of this Part are not complied with; and

(b) take over the responsibility for the Account.

(6) The Departmental Head of the Department responsible for financial management may, at such intervals as he determines and after consultation with the Departmental Head of the Department responsible for a Trust Account, authorize the transfer of the surplus in that Trust Account to the Consolidated Revenue Fund.

20. UNCLAIMED TRUST FUND MONEYS.

(1) All moneys standing to the credit of the Trust Fund that have remained unclaimed for not less than two years after they have become payable from the Fund shall be paid to the Consolidated Revenue Fund.

(2) For the purposes of Subsection (1), a sum that is payable on application or on demand shall be deemed to become payable when a right to apply or to make a demand accrues.

(3) The preceding provisions of this section do not affect the liability of the State to pay the amount of any sum to which those provisions apply.

21. CLOSING OF TRUST ACCOUNTS.

(1) The Minister may direct that any Trust Account be closed.

(2) After all liabilities of the Account have been met, the balance shall be dealt with in accordance with any trust instrument governing dealings with the trust moneys on the failure or expiration of the trust, and if there is no such instrument or if the trust instrument makes no provision for dealing with the moneys on the failure or expiration of the trust the balance shall be paid to the Consolidated Revenue Fund.

PART IV. – NATIONAL BUDGET.

22. NATIONAL BUDGET.

(1) The raising and expenditure of finance by the National Government, including the imposition of taxation and the raising of loans, is subject to authorization and control by the Parliament and shall be regulated by an Act of the Parliament.

(2) For each fiscal year, there shall be a National Budget as required by Section 209 (*Parliamentary responsibility*) of the *Constitution* comprising–

- (a) estimates of finance proposed to be raised and estimates of proposed expenditure of the National Government in respect of the fiscal year; and
- (b) separate appropriations for the service of that year in respect of–
 - (i) the services of the Parliament; and
 - (ii) general public services; and
 - (iii) the services of the Judiciary; and
 - (iv) a development budget for approved projects; and
- (c) such other supplementary Budgets and appropriations as are necessary.

(3) Before any National Budget or appropriation is prepared for submission to the Parliament, the National Executive Council shall consult with any appropriate Permanent Parliamentary Committee, but this subsection does not confer any right or impose any duty of consultation after the initial stages of the preparation of the National Budget or appropriation.

23. COMPILATION OF NATIONAL BUDGET.

(1) The Departmental Head of the Department responsible for financial management may give to Departmental Heads and public office-holders responsible for activities involving the collection and expenditure of public moneys directions as to the form and content of estimates prepared for the purpose of compiling the National Budget.

(2) In compiling the National Budget, the Departmental Head of the Department responsible for financial management may consult with–

- (a) the Departmental Head of the Department of the Prime Minister and National Executive Council; and
- (b) the Departmental Head of the Department responsible for economic planning matters; and
- (c) the Departmental Head of the Department responsible for personnel management matters; and

- (d) in so far as relating to the estimates of expenditure submitted by the Speaker under Section 209(2B) (*Parliamentary responsibility*) of the *Constitution*—the Speaker or a member of the Parliamentary Service nominated by the Speaker for the purpose; and
- (e) in so far as relating to the estimates of expenditure submitted by the Chief Justice under Section 209(2B) (*Parliamentary responsibility*) of the *Constitution*—the Chief Justice or a member of the National Judicial Staff Service nominated by the Chief Justice for the purpose;
- (f) the Departmental Head of the Department responsible for provincial government matters.

PART V. – BUDGETARY CONTROL.

24. ADJUSTMENT OF APPROPRIATION AS BETWEEN SERVICES.

Where there is insufficient appropriation to meet expenditure incurred for a particular service, the Minister may direct the re-allocation of any unexpended appropriation provided that—

- (a) the total of re-allocation shall not exceed a sum specified for the purpose in an Act of the Parliament; and
- (b) the re-allocation is within the budget for general public services or the development budget and is not partly within the budget for general public services and partly within the development budget.

25. ADJUSTMENT OF APPROPRIATION FOR NEW SERVICES.

Where there is insufficient or no appropriation to meet expenditure for a particular service, the Minister may direct the allocation of additional appropriation from the Secretary's Advance, provided that the total additional appropriation so allocated does not exceed the aggregate of the net appropriation for the Secretary's Advance and appropriations transferred from services from time to time.

26. DELEGATION.

(1) The Minister may, by instrument under his hand, delegate to the Departmental Head of the Department responsible for financial management all or any of his powers under Section 24.

(2) Where the Minister has exercised his power of delegation under Subsection (1), the Departmental Head of the Department responsible for financial management may, by written instrument, delegate to a Departmental Head or to Departmental Heads all or any of the powers delegated to him under Subsection (1) (other than the power of sub-delegation).

(3) A delegation under Subsection (1) or (2) may be made subject to such conditions as the delegator thinks fit.

27. LAPSING OF RECURRENT APPROPRIATIONS.

Subject to Section 34, unless the contrary intention appears in any law by or under which the appropriation was made, all recurrent appropriations out of the Consolidated Revenue Fund made in respect of a fiscal year lapse at the end of that fiscal year.

28. CERTAIN AMOUNTS DEEMED TO HAVE BEEN APPROPRIATED.

(1) Moneys recovered in respect of services in the same fiscal year for which the expenditure for those services was authorized, are deemed to be appropriated for the services of that fiscal year.

(2) Where it is proposed by a schedule to an Act appropriating a sum for the purposes of a fiscal year that moneys of a specific description that are received may be credited to an item, subdivision or division in the schedule, an amount equal to the total of the moneys of that description received in that fiscal year shall be deemed to have been appropriated for the purposes and services referred to in that item, subdivision or division, as the case may be.

29. WARRANTS FOR ISSUE AND EXPENDITURE OF PUBLIC MONEYS.

(1) The Minister may, by warrant, authorize the Departmental Head of the Department responsible for financial management to issue warrant authorities authorizing the expenditure of moneys from the Consolidated Revenue Fund for the purpose for which those moneys were appropriated or charged or were deemed to have been appropriated or charged.

(2) A warrant issued under Subsection (1) may limit the amount of moneys to be expended from the Fund if, in the opinion of the Minister, financial exigencies or the public interest so require.

30. LAPSE OF CERTAIN WARRANTS.

Subject to Section 34, all warrants relating to recurrent appropriation lapse at the end of the fiscal year in which they were issued.

31. WARRANT AUTHORITIES.

(1) Subject to Subsection (2), no public moneys shall be committed or expended except as authorized by a warrant authority within a financial year.

(2) Subsection (1) does not apply to payments from the Trust Fund.

(3) Notwithstanding the issue of a warrant authority, if in his opinion financial exigencies or the public interest so require, the Minister may limit or suspend any expenditure with or without suspension of the authority.

(4) Subject to Section 34, all warrant authorities lapse at the end of the fiscal year in which they were issued.

32. APPROVAL OF REQUISITIONS.

(1) The Departmental Head of a Department may appoint officers to approve requisitions for the expenditure of moneys in the Department for which he is responsible in accordance with a warrant authority and may specify conditions for the exercise of that approval.

(2) The Minister may appoint designated officers to approve variations to contracts as regards time, price or other conditions within such limits as are specified in the Financial Instructions.

(3) An officer appointed under this section who wilfully refuses or neglects to comply with the provisions of this section is guilty of an offence under Section 112.

(4) A Departmental Head in relation to the Department of which he is Head may appoint Financial Delegates to approve expenditure in accordance with a Cash Fund Certificate.

33. PAYMENT OF ACCOUNTS.

No account shall be paid unless the payment has been authorized by an officer appointed to do so by the Departmental Head of the Department for which he is responsible.

34. TRANSFER TO TRUST ACCOUNTS OF ADVANCES OF GOVERNMENT CONTRIBUTIONS TO DONOR-FUNDED PROJECTS.

⁹Advances of Government contributions to donor-funded projects shall be transferred to Trust Accounts in accordance with the provisions of Financial Instructions.

⁹ Section 34 amended by the *Public Finances (Management) (Amendment) Act 1998* (No. 14 of 1998), s3.

PART VA.¹⁰ – BUDGETARY CONTROL OF REVENUE ACCRUING TO THE STATE FROM THE DEVELOPMENT OF MINERAL RESOURCES.

34A. INTERPRETATION.

¹¹In this Part–

“designated mining enterprise” means any mining enterprise engaged in mining activities under a special mining lease issued or deemed to be issued under–

- (a) Section 33 of the *Mining Act 1992*; or
- (b) any similar provisions of a prescribed Act;

“designated petroleum enterprise” means any petroleum exploration or development enterprise engaged in petroleum exploration or development under–

- (a) a petroleum development licence or petroleum prospecting licence issued under the *Oil and Gas Act 1998*; or
- (b) any similar provision of a prescribed Act;

“person associated with mining or petroleum activities” means a person corporate or natural, declared for the purpose of this Act by the Minister to be a person associated with mining or petroleum activities.

34B. PREPARATION OF ESTIMATES OF REVENUE, ETC.

¹²(1) The Departmental Head of the Department responsible for financial management shall, in the preparation of estimates of finance proposed to be raised for a fiscal year, specify–

- (a) the revenue that, in his opinion, is expected to accrue to the Government from–
 - (i) designated mining enterprises; and
 - (ii) designated petroleum enterprises; and
 - (iii) persons associated with mining or petroleum activities; and
- (b) the assumptions underlying his opinion.

(2) The matters referred to in Subsection (1) shall be contained in Volume I of the National Budget documents.

34C. EXPENDITURE OF EXCESS REVENUE FROM DESIGNATED MINING ENTERPRISES, ETC.,.

¹³(1) Where in any fiscal year the revenue accruing to Government from–

¹⁰ Part VA inserted by No 57 of 2000.

¹¹ Section 34A inserted by No 57 of 2000.

¹² Section 34B inserted by No 57 of 2000.

- (a) designated mining enterprises; and
- (b) designated petroleum activities; and
- (c) persons associated with mining or petroleum activities,

exceeds the amount specified in respect of that fiscal year under Section 34B (1)(a), the amount of excess shall, subject to Subsection (2) be used only for the purpose of retiring debts incurred by the National Government.

(2) Excess revenue referred to in Subsection (1) (not exceeding in total 10% of the amount of revenue specified in Section 34B(1)(a)) may only be used for purposes other than the retiring of debts incurred by the National Government in accordance with an additional appropriation approved by the National Parliament.

¹³ Section 34C inserted by No 57 of 2000.

PART VI. – BORROWING, GUARANTEES AND LOANS BY THE STATE.**35. RESTRICTIONS ON BORROWING.**

(1) The State may not borrow money except under and in accordance with an Act of the Parliament.

(2) Moneys borrowed under Subsection (1) from whatever sources shall not exceed the limit provided for by the *Central Banking Act 2000*.

(3) All debt charges for which the State is liable in respect of loan moneys shall be charged on the Consolidated Revenue Fund.

36. ADVANCES AND OVERDRAFTS.

(1) The Minister may, for and on behalf of the State, borrow moneys–

(a) from such domestic and external sources; and

(b) on such terms and conditions,

as the Head of State, acting on advice, approves, in order to meet temporary deficiencies in revenue in a fiscal year.

(2) Moneys borrowed under Subsection (1) from whatever sources shall not exceed the limit provided for by the *Central Banking Act 2000*.

(3) The principal and interest on moneys borrowed under Subsection (1) shall be charged to the Consolidated Revenue Fund and are payable from the Fund.

37. GUARANTEES BY THE STATE.

(1) The Minister may, for and on behalf of the State, guarantee the repayment of a loan (including interest and associated charges) made to any person, where the loan was made for purposes approved by the Head of State, acting on advice.

(2) The Minister may, on behalf of the State, charge such fee in respect of a guarantee made under Subsection (1) as he considers appropriate in relation to that guarantee.

(3) Where the Minister has guaranteed the repayment of a loan under Subsection (1), he shall, at the first sitting of the Parliament following the giving of the guarantee, table the documents relating to the guarantee.

38. LOANS BY THE STATE.

(1) The Minister may, for and on behalf of the State, make a loan to any person, where that loan is made for purposes approved by the Head of State, acting on advice.

(2) The Minister may, on behalf of the State, charge such fee in respect of a loan made under Subsection (1) as he considers appropriate in relation to that loan.

PART VII. – STATE TENDERS AND CONTRACTS.

38A. APPLICATION OF THIS PART.

¹⁴This Part does not apply to transactions contemplated by the Option Agreement (as defined in the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*).

39. CENTRAL SUPPLY AND TENDERS BOARDS.

¹⁵(1) The Central Supply and Tenders Board is hereby established to control and regulate –

- (a) the purchase and disposal of property and stores; and
- (b) the supply of works and services,

other than those in relation to which specialized Supply and Tenders Boards have been established under Section 39A, for and on behalf of the State.

(2) In the exercise of its powers under Subsection (1), the Central Supply and Tenders Board may –

- (a) invite a tender for any amount; and
- (b) enter into a contract for any amount up to K10,000,000.00,

for and on behalf of the State.

(3) The Central Supply and Tenders Board shall consist of six members comprising: –

- (a) the Departmental Head of the Department responsible for finance matters (the Deputy Departmental Head to be his alternate), *ex officio*; and
- (b) the Departmental Head of the Department responsible for works matters (the Deputy Departmental Head (Policy) to be his alternate), *ex officio*; and
- (c) the Departmental Head of the Department responsible for trade and industry matters (the Deputy Departmental Head (Policy) to be his alternate), *ex officio*; and
- (d) the State Solicitor (the Deputy State Solicitor to be his alternate), *ex officio*; and
- (e) two persons (and their alternates) who have unimpeachable and impeccable reputations and have relevant experiences or demonstrated

¹⁴ Section 38A inserted by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996* (No. 3 of 1996), s27.

¹⁵ Section 39 Substituted by No. 16 of 2003, s. 1; Subsection (2) amended by No. 16 of 2003, s. 1; Subsection (3) amended by No. 16 of 2003, s. 1; Subsection (3) amended by No. 16 of 2003, s. 1; Substituted by No. 16 of 2003, s. 1.

understanding of commercial and/or actual procurement/contracting practices nominated by the Universities; and

- (f) a person (and his alternate) who has an unimpeachable and impeccable reputation and has relevant experience or demonstrated understanding of commercial and/or actual procurement/contracting practices nominated by the Papua New Guinea Chamber of Commerce and Industry.

(4) Where the Minister agrees with a nomination for membership of the Central Supply and Tenders Board under Subsection (2)(e) or (f) from a list of three nominees submitted by each of the organization concerned, the nominee approved by the Minister –

- (a) shall be appointed as a member of the Central Supply and Tenders Board by the Minister by notice in the National Gazette; and
- (b) shall be appointed for a period of three years; and
- (c) holds office upon such terms and conditions as are determined by the Minister by notice in the National Gazette; and
- (d) is eligible for re-appointment.

(5) The Head of State, acting on advice, may, by notice in the National Gazette, appoint a member of the Central Supply and Tenders Board to be the Chairman of the Board, and, where the member so appointed as Chairman is not an *ex officio* member, he –

- (a) shall be appointed for a period of three years; and
- (b) shall be on full-time employment upon such terms and conditions as are determined by the Head of State, acting on advice.

(6) At a meeting of the Central Supply and Tenders Board –

- (a) the Chairman or, in his absence, a person appointed by the member from their number as chairman for that meeting, shall preside; and
- (b) matters arising shall be decided by a majority of the votes of the members present; and
- (c) the person presiding has a deliberative, and in the event of an equality of votes on any matters, also a casting vote; and
- (d) the quorum shall be four members of whom at least one shall be a non-public office holder and no more than two are alternates; and
- (e) the procedures of the meeting are as determined by the Board.

(7) The –

- (a) Head of State, acting on advice, in the case of the Chairman; or
- (b) the Minister, in the case of a member other than an *ex officio* member,

may terminate the appointment of that Chairman or that member, as the case may be –

- (c) for ill health, incompetence or impropriety; and
- (d) only after the receipt by him of a report on the reason for the proposed termination.

(8) The Minister may make Rules, not inconsistent with this Act or the Financial Instructions, prescribing –

- (a) the manner of inviting tenders publicly; and
- (b) the method of dealing with tenders; and
- (c) the criteria to be applied in the evaluation of tenders; and
- (d) the appointment by the Board of advisers in technical matters; and
- (e) the keeping by the Boards of records of the performance of each successful tenderer; and
- (f) the manner of regulating the disposal of property no longer required by the State; and
- (g) the method of obtaining and dealing with quotations for –
 - (i) the purchase and disposal of property and stores; and
 - (ii) the supply of goods and services; and
- (h) the manner in which the Board shall supervise the operations of other Tender Boards established under Section 39A and 39B.

39A. OTHER SPECIALIZED NATIONAL SUPPLY AND TENDERS BOARD.

¹⁶(1) The Minister may, by notice in the National Gazette, establish such number of other national Supply and Tenders Boards for specific –

- (a) technical or specialized purposes; or
- (b) purposes related to natural or man-made disasters that warrant the establishment of special Supply and Tenders Boards,

as he, on the advice of the Departmental Head of the Department responsible for financial management, thinks necessary to control and regulate, in respect of such technical or specialized purposes or disasters –

- (c) the purchase and disposal of property and stores; and
- (d) the supply of works and services,

for any amount up to K1,000,000.00 or such lesser amount as the Minister may determine by notice in the National Gazette, for and on behalf of the State.

(2) The Minister may make Rules, not inconsistent with this Act or the Financial Instructions, prescribing, in relation to a Board established under Subsection (1) –

¹⁶ Section 39A Inserted by No. 16 of 2003, s. 2.

- (a) the procedures for meetings of the Board including fixing of quorum; and
- (b) the manner of inviting tenders publicly; and
- (c) the method of dealing with tenders; and
- (d) the criteria to be applied in the evaluation of tenders; and
- (e) the appointment by the Board of advisers in technical matters; and
- (f) the keeping by the Board of records of the performance of each successful tenderer; and
- (g) the method of obtaining and dealing with quotations for –
 - (i) the purchase and disposal of property and stores; and
 - (ii) the supply of works and services; and
- (h) the manner of regulating the disposal of property and stores no longer required by the State.

(3) The Minister may, from time to time, issue to Boards established under Subsection (1) policy directions as to the giving of preference to national tenderers and local manufacturers, and such directions shall be binding on Boards.

(4) In the event of the absence of a member of a Board from a meeting of the Board or his inability for any reason to act in relation to a matter, his alternate has and may exercise and perform all his powers and functions for the purpose of that meeting or in relation to that matter.

(5) The Minister may, at any time, by written notice to a member or the alternate of a member, remove the member or alternate, as the case may be, and appoint another in his place.

39B. PROVINCIAL SUPPLY AND TENDERS BOARDS.

¹⁷(1) The Minister may, by notice in the National Gazette, establish such number of Provincial Supply and Tenders Boards as he, on the advice of the Departmental Head of the Department responsible for financial management, thinks necessary to control and regulate –

- (a) the purchase and disposal of property and stores; and
- (b) the supply of works and services,

for any amount up to K3,000,000.00 or such lesser amount as the Minister, on the advice of the Central Supply and Tenders Board, may determine by notice in the National Gazette, for and on behalf of the State in the provinces.

(2) A Provincial Supply and Tenders Board shall comprise the following: –

- (a) the Provincial Administrator (the Deputy Provincial Administrator to be his alternate), *ex officio*, who shall be the Chairman; and

¹⁷ Section 39B Inserted by No. 16 of 2003, s. 2.

- (b) the Provincial Works Manager (the Advisor Technical Services to be his alternate), *ex officio*; and
- (c) the Advisor Planning and Budgeting (the Deputy Advisor Planning and Budgeting to be his alternate), *ex officio*; and
- (d) the Provincial Treasurer (the Provincial Expenditure Accountant to be his alternate), *ex officio*; and
- (e) a member (and his alternate) who has an unimpeachable a impeccable reputation and has relevant experience or demonstrated understanding of commercial and/or actual procurement/contracting practices nominated by the Provincial Chamber of Commerce or, where there is no such body, the Papua New Guinea Business Council.

(3) Where the Minister agrees with a nomination for membership of a Provincial Supply and Tenders Board under Subsection (2)(e) from a list of three nominees submitted by the organization concerned, the nominee approved by the Minister –

- (a) shall be appointed as a member of the Provincial Supply and Tenders Board by the Minister by notice in the National Gazette; and
- (b) shall be appointed for a period of three years; and
- (c) holds office upon such terms and conditions as are determined by the Minister by notice in the National Gazette; and
- (d) is eligible for re-appointment.

(4) At a meeting of a Provincial Supply and Tenders Board –

- (a) the Chairman or, in his absence, a person appointed by the members from their number as chairman for that meeting, shall preside; and
- (b) matters arising shall be decided by a majority of the votes of the members present; and
- (c) the person presiding has a deliberative, and in the event of an equality of votes on any matter, also as casting vote; and
- (d) the quorum shall be three members; and
- (e) the procedures of the meeting are as determined by the Board.

(5) The Minister may at any time terminate the appointment of a member of a Provincial Supply and Tenders Board, other than an *ex officio* member, for ill health, corruption, incompetence or impropriety and may appoint another person in his place.

(6) In respect of Provincial Supply and Tenders Boards established under Subsection (1), the Minister may make Rules, not inconsistent with this Act or the Financial Instruments, prescribing –

- (a) the manner of inviting tenders publicly; and
- (b) the method of dealing with tenders; and

- (c) the criteria to be applied in the evaluation of tenders; and
- (d) the appointment by the Boards of advisers in technical matters; and
- (e) the keeping by the Boards of records of the performance of each successful tenderer; and
- (f) the manner of regulating the disposal of property no longer required by the State; and
- (g) the method of obtaining and dealing with quotations for –
 - (i) the purchase and disposal of property and stores; and
 - (ii) the supply of goods and services.

39A. OTHER SPECIALIZED NATIONAL SUPPLY AND TENDERS BOARD.

¹⁸(1) The Minister may, by notice in the National Gazette, establish such number of other national Supply and Tenders Boards for specific –

- (a) technical or specialized purposes; or
- (b) purposes related to natural or man-made disasters that warrant the establishment of special Supply and Tenders Boards,

as he, on the advice of the Departmental Head of the Department responsible for financial management, thinks necessary to control and regulate, in respect of such technical or specialized purposes or disasters –

- (c) the purchase and disposal of property and stores; and
- (d) the supply of works and services,

for any amount up to K1,000,000.00 or such lesser amount as the Minister may determine by notice in the National Gazette, for and on behalf of the State.

(2) The Minister may make Rules, not inconsistent with this Act or the Financial Instructions, prescribing, in relation to a Board established under Subsection (1) –

- (a) the procedures for meetings of the Board including fixing of quorum; and
- (b) the manner of inviting tenders publicly; and
- (c) the method of dealing with tenders; and
- (d) the criteria to be applied in the evaluation of tenders; and
- (e) the appointment by the Board of advisers in technical matters; and
- (f) the keeping by the Board of records of the performance of each successful tenderer; and
- (g) the method of obtaining and dealing with quotations for –

¹⁸ Section 39A Inserted by No. 16 of 2003, s. 1.

- (i) the purchase and disposal of property and stores; and
- (ii) the supply of works and services; and
- (h) the manner of regulating the disposal of property and stores no longer required by the State.

(3) The Minister may, from time to time, issue to Boards established under Subsection (1) policy directions as to the giving of preference to national tenderers and local manufacturers, and such directions shall be binding on Boards.

(4) In the event of the absence of a member of a Board from a meeting of the Board or his inability for any reason to act in relation to a matter, his alternate has and may exercise and perform all his powers and functions for the purpose of that meeting or in relation to that matter.

(5) The Minister may, at any time, by written notice to a member or the alternate of a member, remove the member or alternate, as the case may be, and appoint another in his place.

39B. PROVINCIAL SUPPLY AND TENDERS BOARDS.

¹⁹(1) The Minister may, by notice in the National Gazette, establish such number of Provincial Supply and Tenders Boards as he, on the advice of the Departmental Head of the Department responsible for financial management, thinks necessary to control and regulate –

- (a) the purchase and disposal of property and stores; and
- (b) the supply of works and services,

for any amount up to K3,000,000.00 or such lesser amount as the Minister, on the advice of the Central Supply and Tenders Board, may determine by notice in the National Gazette, for and on behalf of the State in the provinces.

(2) A Provincial Supply and Tenders Board shall comprise the following: –

- (a) the Provincial Administrator (the Deputy Provincial Administrator to be his alternate), *ex officio*, who shall be the Chairman; and
- (b) the Provincial Works Manager (the Advisor Technical Services to be his alternate), *ex officio*; and
- (c) the Advisor Planning and Budgeting (the Deputy Advisor Planning and Budgeting to be his alternate), *ex officio*; and
- (d) the Provincial Treasurer (the Provincial Expenditure Accountant to be his alternate), *ex officio*; and
- (e) a member (and his alternate) who has an unimpeachable a impeccable reputation and has relevant experience or demonstrated understanding of commercial and/or actual procurement/contracting practices

¹⁹ Section 39B Inserted by No. 16 of 2003, s. 1.

nominated by the Provincial Chamber of Commerce or, where there is no such body, the Papua New Guinea Business Council.

(3) Where the Minister agrees with a nomination for membership of a Provincial Supply and Tenders Board under Subsection (2)(e) from a list of three nominees submitted by the organization concerned, the nominee approved by the Minister –

- (a) shall be appointed as a member of the Provincial Supply and Tenders Board by the Minister by notice in the National Gazette; and
- (b) shall be appointed for a period of three years; and
- (c) holds office upon such terms and conditions as are determined by the Minister by notice in the National Gazette; and
- (d) is eligible for re-appointment.

(4) At a meeting of a Provincial Supply and Tenders Board –

- (a) the Chairman or, in his absence, a person appointed by the members from their number as chairman for that meeting, shall preside; and
- (b) matters arising shall be decided by a majority of the votes of the members present; and
- (c) the person presiding has a deliberative, and in the event of an equality of votes on any matter, also as casting vote; and
- (d) the quorum shall be three members; and
- (e) the procedures of the meeting are as determined by the Board.

(5) The Minister may at any time terminate the appointment of a member of a Provincial Supply and Tenders Board, other than an *ex officio* member, for ill health, corruption, incompetence or impropriety and may appoint another person in his place.

(6) In respect of Provincial Supply and Tenders Boards established under Subsection (1), the Minister may make Rules, not inconsistent with this Act or the Financial Instruments, prescribing –

- (a) the manner of inviting tenders publicly; and
- (b) the method of dealing with tenders; and
- (c) the criteria to be applied in the evaluation of tenders; and
- (d) the appointment by the Boards of advisers in technical matters; and
- (e) the keeping by the Boards of records of the performance of each successful tenderer; and
- (f) the manner of regulating the disposal of property no longer required by the State; and
- (g) the method of obtaining and dealing with quotations for –
 - (i) the purchase and disposal of property and stores; and

- (ii) the supply of goods and services.

40. TENDERS FOR PROPERTY, STORES, WORKS AND SERVICES.

(1) Subject to—

- (a) this section; and
- (b) Section 41,

tenders shall be publicly invited and contracts let for the purchase or disposal of property or stores or the supply of works and services the estimated cost of which exceeds the prescribed amount.

(2) In relation to the purchase or disposal of property and stores and the supply of works and services the estimated cost of which does not exceed the prescribed amount, the provisions of the Financial Instructions shall apply.

(3) The preceding provisions of this section do not apply to the purchase or disposal of property or stores or the supply of works and services—

- (a) that are to be purchased from, disposed of to, or executed or performed by—
 - (i) a public body or an authority or instrumentality of the State approved for the purpose by the Minister; or
 - (ii) a Provincial Government; or
 - (iii) a Local-level Government; or
 - (iv) an approved overseas agency; or
- (b) in respect of which a Board certifies that the inviting of tenders is impracticable or inexpedient; or
- (c)²⁰ where, in individual transactions involving amounts not exceeding K500,000.00, the Minister in his discretion considers that there is a natural disaster or it is not expedient or proper to call public tenders and, prior to the goods or services being provided, by certificate in writing narrates these circumstances and waives the provisions of this section; or
- (d) where the terms of an agreement concluded, or proposed to be concluded, with any international organization under which the State is to receive moneys, make specific provision for the manner in which tenders will be invited for contracts to be performed in relation to the agreement.

(4) In Subsection (3)(a)(iv), “**approved overseas agency**” means the government, a government department, a government instrumentality or a statutory corporation of a country other than Papua New Guinea approved by the Minister by notice in the National Gazette.

²⁰ Section 40(3)(c) repealed and replaced by *Public Finances (Management) (Amendment) Act* 1996 (No. 5 of 1996) s1.

(5)²¹ ²²In relation to contracts for the supply of works and services, the provisions of this section and of Section 41 shall apply to—

- (a) turnkey contracts; and
- (b) build-operate transfer contracts; and
- (c) contracts which in substance are similar to turnkey contracts or build-operate transfer contracts; and
- (d) contracts involving the expenditure of public moneys.

41. PREFERENCE TO NATIONAL TENDERERS.

Where a Board is satisfied that the value of a contract is not likely to exceed K1,000,000.00 or such lesser amount as the Minister directs, it may by written order direct that tenders be restricted to national tenderers (in which case the provisions of Section 40 apply to that contract).

42. CONSIDERATION OF TENDERS.

(1) Where under this Part tenders have been invited, the Secretary of the Board concerned shall, as soon as possible after the closing date for the receipt of tenders, prepare for the Chairman details in schedule form of the tenders received for presentation to the Board at the meeting at which the tenders are to be considered.

(2) The Board shall co-opt, or seek the advice of, persons with specialized knowledge to assist the Board in its consideration of tenders received.

(3) The Board shall consider a tender in the light of conditions of tender and the specifications and plans (if any) of the matter or thing in respect of which tenders were invited and shall apply to the consideration of all tenders the criteria supplied by the Minister.

(4) Any representations by a tenderer to amend his tender after the closing time for tenders shall be immediately reported to the Board.

(5) In examining a tender, the Board shall give consideration to the capacity, experience, integrity, financial status and past performance of the tenderer and such other matters as it thinks relevant.

(6) Where—

- (a) the amount of the most cost-effective tender—
 - (i) exceeds the upper limit of authority of the Board specified under Section 39(2)(a),
 - (ii)²³ [*Repealed.*]

²¹ Section 40(5) added by the *Public Finances (Management) (Amendment) Act 1998* (No. 14 of 1998), s4.

²² Section 40(5) added by the *Public Finances (Management) (Amendment) Act 1998* (No. 14 of 1998), s4.

²³ Section 42(6)(a)(ii) repealed by the *Public Finances (Management) (Amendment) Act 1996* (No. 5 of 1996) s2.
Section 42(6)(a)(ii) no longer effective due to repeal of Section 43.

the Chairman of the Board shall refer that tender to the Small Contracts Award Board to be dealt with in accordance with Section 43.

(7)²⁴ [*Repealed.*]

(8) Where, in the opinion of the Board, it is in the best interests of the State to do so, the Board may, subject to directions issued by the Minister under Section 39—

(a) where the amount of the tender does not exceed the prescribed amount—

- (i) accept a tender; and
- (ii) reject all other tenders,

and the reasons for the acceptance and rejection shall be detailed in the minutes of the meeting of the Board; and

(b) where the amount of the tender exceeds the prescribed amount recommend to the Minister responsible—

- (i) the acceptance of the tender; and
- (ii) the rejection of all other tenders,

and the reasons for the recommendation shall be detailed in the minutes of the meeting of the Board.

(9) Where a Minister receives a recommendation from a Board under Subsection (8)(b), he shall submit to the National Executive Council the recommendation together with particulars of other tenders received and the National Executive Council shall decide which tender shall be accepted.

(10) Where, after consideration of the tenders—

- (a) two or more tenders appear satisfactory; and
- (b) in the opinion of the Board, there is no advantage to the State in preferring a particular satisfactory tender over the other satisfactory tenders,

the Board—

(c) where the amount of a tender does not exceed the prescribed amount, may accept one or more tenders except that the Board may, in its discretion and to ensure as far as practicable a fair division of business within an area where it is satisfied that the action is warranted, divide the acceptance between two or more satisfactory tenders, and in any such case the reasons for the acceptance shall be detailed in the minutes of the Board; or

(d) where the amount of a tender exceeds the prescribed amount, shall recommend to the Minister responsible the acceptance of a satisfactory tender except that the Board may, in its discretion and to ensure as far as practicable a fair division of business within an area, where it is

²⁴ Section 42(7) repealed by the *Public Finances (Management) (Amendment) Act* 1996 (No. 5 of 1996) s2.

satisfied that the action is warranted, recommend to the Minister responsible the division of acceptance between two or more of the satisfactory tenders, and in any such case the reasons for the recommendation shall be detailed in the minutes of the meeting of the Board and in the recommendation.

(11) Where a Minister receives a recommendation under Subsection (10)(d), he shall submit to the National Executive Council the recommendation together with particulars of all tenders received and the National Executive Council shall decide which tender or tenders shall be accepted.

(12) Nothing in this section derogates from any other provisions of this Act or from any other law requiring a written contract or agreement to be entered into in respect of the subject of a tender.

43²⁵. [REPEALED.]

44. FORM OF RECOMMENDATION BY BOARD.

Subject to Section 42(6), a recommendation by the Board shall be—

- (a) in the form of a submission containing the reasons for the recommendation; and
- (b) accompanied by—
 - (i) the tender notice; and
 - (ii) the conditions of tender; and
 - (iii) specifications and plans (if any) of the matter or thing in respect of which tenders were invited; and
 - (iv) the tenders received and considered.

45. NOTICE OF SUCCESSFUL TENDER.

After notice of the acceptance of his tender has been communicated to a successful tenderer, the Chairman of the Board shall cause notice of the acceptance of the tender to be—

- (a) sent to all other tenderers for the matter or thing to which the tender relates; and
- (b) published in the National Gazette.

46. SECRECY.

A member of a Board, the Secretary of a Board, a witness and a person co-opted to give advice to or assist the Board shall not discuss or divulge the contents of a tender in respect of any matter or thing, except in the course of—

²⁵ Section 43 repealed by the *Public Finances (Management) (Amendment) Act 1996* (No. 5 of 1996) s3.

- (a) recording details of the tender in the Tenders Register; or
- (b) preparing a notice of acceptance of a late tender; or
- (c) giving advice to the Board on the tender; or
- (d) consideration of the tender at a meeting of the Board; or
- (e) making a recommendation that involves reference to the tender; or
- (f) causing notice of the acceptance of the tender to be sent to other tenderers or published in the National Gazette.

47. EXECUTION, ETC., OF STATE CONTRACTS.

²⁶(1) Subject to Section 42(6), where there is no provision in any law as to the person or authority empowered to execute a contract or agreement on behalf of the State, that contract or agreement may be executed—

- (a) by the Head of State, acting on advice; or
- (b)²⁷ where the amount of the consideration does not exceed K5,000,000.00 by the Minister; or
- (c) where the amount of the consideration does not exceed an amount (not exceeding K5,000,000.00.) specified by the Minister, by the Chairman of the Tenders Board which considered the tender leading to the contract or agreement.

(2) Subject to Section 42(6), where a contract or agreement was executed by a Minister or the Minister or by the Head of State, acting on advice, or by the Chairman of a Tenders Board any variation thereto may be executed by the Minister or by the Head of State, acting on advice.

(3)²⁸ ²⁹Where the amount of the consideration of a contract or agreement to which the State is a party exceeds K5,000,000.00, the Minister shall cause a copy of the contract or agreement to be laid before the first sitting of the Parliament after execution of the contract or agreement.

47A. OFFENCES.

³⁰A Departmental Head, Provincial Administrator, head of a public body or other officer who authorizes or permits a breach of procedures relating to the—

- (a) calling, consideration and awarding of tenders; or
- (b) the execution of a state contract,

²⁶ Section 47: heading repealed and replaced by the *Public Finances (Management) (Amendment) Act 1998* (No. 14 of 1998), s5(a).

²⁷ Section 47(1)(b) amended by the *Public Finances (Management) (Amendment) Act 1996* (No. 5 of 1996), s4(a); amended by the *Public Finances (Management) (Amendment) Act 1996* (No. 5 of 1996), s4(b).

²⁸ Section 47(3) added by the *Public Finances (Management) (Amendment) Act 1998* (No. 14 of 1998), s5(b).

²⁹ Section 47(3) added by the *Public Finances (Management) (Amendment) Act 1998* (No. 14 of 1998), s5(b).

³⁰ Section 47A added by the *Public Finances (Management) (Amendment) Act 1998* (No. 14 of 1998), s6.

is for the purposes of the *Public Services (Management) Act 1995* or any contract entered into under that Act, guilty of a serious disciplinary offence.

47B. AUTHORITY TO PRE-COMMIT EXPENDITURE.

³¹(1) The Departmental Head of the Department responsible for financial management may issue to a Departmental Head an Authority to Pre-commit Expenditure in relation to the purchase of property or stores or to the supply of goods or services where the Departmental Head of the Department responsible for financial management is satisfied that –

- (a) in the case of proposed expenditure exceeding K100,000.00 –
 - (i) in the provisions of this Part have been complied with in relation to the purchase or supply; and
 - (ii) funds will be available to meet the proposed schedule of payments for the purchases or supply; and
- (b) in the case of proposed expenditure not exceeding K100,000.00, the circumstances of the proposed expenditure are such that it is appropriate to authorize the Department, to the Departmental Head of which the Authority to Pre-Commit Expenditure was granted, to enter into a contract for the purchase of property or stores or for the supply of goods or services notwithstanding that the full amount of funds to meet the payment required under the contract is not immediately available but it is within the appropriation for the year to which the Authority to Pre-commit Expenditure relates for the item to which it relates.

(2) An Authority to Pre-Commit Expenditure under Subsection (1) shall specify –

- (a) the purchase of property or stores or the supply of goods or services to which it relates; and
- (b) the maximum amount to which the Authority extends.

(3) Subject to Subsection (4), an Authority to Pre-commit expenditure under Subsection (1) authorizes the execution, in accordance with and subject to compliance with the procedures specified in this Part, of a contract for the purchase of property or stores or for the supply of goods and services specified in the Authority to the extent of an amount not exceeding the maximum amount specified in the Authority.

(4) A contract under Section 47 shall not be entered into unless –

- (a) an Authority to Pre-commit Expenditure under Subsection (1) relating to the contract has been issued; and
- (b) all other requirements of this Part relating to the contract have been complied with.

³¹ Section 47B Inserted by No. 48 of 2002, s. 1.

47C. CERTAIN CONTRACTS NULL AND VOID.

³²(1) In this section –

“Authority to Pre-commit Expenditure” means an Authority to Pre-commit Expenditure issued under Section 47B;

“Integrated Local Purchase Order and Chain (ILOC)” means Financial Form 4A – Integrated Local Purchase Order and Claim issued in accordance with the Financial Instructions.

(2) A contract for the purchase of property or stores or for the supply of goods or services entered into, or purported to have been entered into, by or on behalf of the State, in respect of which purchase of supply no Authority to Pre-commit Expenditure has been issued or no Integrated Local Purchase Order and Claim has been issued, is null and void.

(3) The provisions of this section apply in respect of contracts entered into, or purported to have been entered into, or purported to have been entered into, by or on behalf of the State, on or after 1 March 2003.

47D. CLAIM AGAINST STATE NOT ENFORCEABLE IN CERTAIN CIRCUMSTANCES.

³³(1) In this section –

“Authority to Pre-commit Expenditure” means an Authority to Pre-commit Expenditure issued under Section 47B;

“Integrated Local Purchase Order or Claim (ILPOC)” means Finance Form 4A – Integrated Local Purchase Order or Claim issued in accordance with the Financial Instructions.

(2) A claim for the price arising from the sale of property or stores or for the supply of goods or services to the State shall not be enforceable, through the courts or otherwise, unless the seller of the property or stores or the supplier of the goods or services produces –

- (a) an Integrated Local Purchase Order or Claim (ILPOC); or
- (b) an Authority to Pre-commit Expenditure,

relating to the property or stores or goods or services, the subject of the claim, to the full amount of the claim.

(3) The provisions of this section apply where the property or stores were purported sold to the State or the goods or services were purportedly supplied to the State on or after 1 March 2003.

³² Section 47C Inserted by No. 48 of 2002, s. 1.

³³ Section 47D Inserted by No. 48 of 2002, s. 1.

PART VIII. – PUBLIC BODIES.**48. APPLICATION OF THIS PART.**

(1) Subject to Subsection (4), nothing in this Part applies to or in relation to a public body unless it is so provided by a law, and then only to the extent, and subject to the exceptions, limitations, conditions, additions and modifications prescribed by that law.

(2) The constituent law of a public body may provide that the provisions of this Act apply to and in relation to that body.

(3) Subject to Subsection (4), the application of this Act to a public body may be in whole or in part, and may be with or without exceptions, limitations, conditions, additions or modifications, as prescribed by its constituent law.

(4) Where any provision in this Part is stated to apply to all public bodies notwithstanding any contrary provision in any other law, then such provision shall apply, notwithstanding any provision to the contrary and notwithstanding and without regard to any exceptions, limitations, conditions, additions or modifications in any other law.

49. SUBSIDIARY CORPORATIONS.

(1) For the purposes of this Part, a corporation shall, subject to Subsection (3), be deemed to be a subsidiary of a public body if–

- (a) that public body–
 - (i) controls the composition of the board of directors of the corporation; or
 - (ii) controls more than 50% of the voting power of the corporation; or
 - (iii) holds more than 50% of the issued share capital of the corporation (excluding any part of it that carried no right to participate beyond a specific amount in a distribution of either profits or capital); or
- (b) the corporation is a subsidiary of a corporation that is a subsidiary of the public body.

(2) For the purposes of Subsection (1), the composition of a corporation's board of directors shall be deemed to be controlled by a public body, if the public body, by the exercise of a power exercisable by it without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and for the purposes of this provision the public body shall be deemed to have power to make such an appointment if–

- (a) a person cannot be appointed as a director without the exercise in his favour by the public body of such a power; or

- (b) a person's appointment as a director follows necessarily from his being a member of the controlling body of, or an officer or employee of, the public body.
- (3) In determining whether a corporation is a subsidiary of a public body—
 - (a) any shares held or power exercisable by a public body in a fiduciary capacity shall be treated as not held or exercisable by it; and
 - (b) subject to Paragraphs (c) and (d), any shares held or power exercisable—
 - (i) by a person as a nominee for the public body (except where it is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of the public body, not being a subsidiary that is concerned only in a fiduciary capacity,
shall be treated as held or exercisable by that public body;
and
 - (c) any shares held or power exercisable by a person by virtue of the provisions of any debenture of the corporation, or of a trust deed for securing an issue of any such debenture shall be disregarded; and
 - (d) any share held, or power exercisable by, or by a nominee for, the public body or a subsidiary of it (otherwise than as mentioned in Paragraph (c)) shall be treated as not held or exercisable by that public body if—
 - (i) the ordinary course of business of the public body or its subsidiary, as the case may be, includes the lending of money; and
 - (ii) the shares are held or the power is exercisable by way of security only for the purposes of a transaction entered into in the normal course of business.

50. PERFORMANCE AND MANAGEMENT PLANS.

(1) The provisions of this section apply to and in respect of all public bodies notwithstanding any provision to the contrary in any other law and notwithstanding and without regard to any exceptions, limitations, conditions, additions or modifications contained in any other law.

(2) The chief executive of each public body shall, at such intervals as are required by the Departmental Head of the Department responsible for financial management, submit to the Departmental Head of the Department responsible for financial management, a performance and management plan in respect of the public body of which he is the chief executive.

(3) A performance and management plan under Subsection (2) shall be in such form, and shall contain such information, as is specified by the Departmental Head of the Department responsible for financial management.

(4) The Departmental Head of the Department responsible for financial management may carry out a performance review when he considers it necessary.

51. PARTICULARS OF PROPOSED EXPENDITURE.

A public body to which this Act applies shall, not later than three months before the end of each fiscal year, submit to the Departmental Head of the Department responsible for financial management—

- (a) estimates of its receipts and expenditure for the next financial year; and
- (b) its proposed works programme (if any) for that financial year,

in such form as the Minister approves.

52. BANK ACCOUNTS.

(1) A public body to which this Act applies may open and maintain an account or accounts with an approved bank or approved banks, and shall at all times maintain at least one such account.

(2) The public body shall pay all its moneys into an account referred to in Subsection (1).

53. MONEYS PAYABLE TO PUBLIC BODIES.

(1) There are payable to a public body to which this Act applies such moneys (if any) as are appropriated by the Parliament for the purposes of the public body.

(2) Moneys payable to a public body in accordance with this section shall be paid in such amounts and at such times as the Departmental Head of the Department responsible for financial management determines.

(3) Moneys payable under Subsection (1) are in the nature of a conditional grant and in the event of non-expenditure for the purposes for which they were appropriated, may be required to be returned to Consolidated Revenue.

54. LOANS BY THE STATE.

(1) A public body to which this Act applies may accept an offer by the Minister to loan moneys for the purposes of the public body on such terms as are agreed between the public body and the Minister.

(2) The public body shall repay in accordance with the terms on which a loan under Subsection (1) is made, such portion of the loan as is repayable.

55. PRIVATE TREATY LOANS.

(1) A public body to which this Act applies may, with the consent of the Minister, borrow money for its purposes, from a person on such terms as are agreed between the public body and the person.

(2) The public body shall repay a loan made under Subsection (1) in accordance with the terms on which it was made.

56. BORROWING BY OVERDRAFT.

A public body to which this Act applies may, with the consent of the Minister, borrow for its purposes, by overdraft, within such limits as the Minister approves.

57. INVESTMENT.

(1) In this section, “**authorized short-term money market**” means the group of dealer companies that are authorized by the Central Bank to be approved dealers in short-term loans and towards which that Bank acts as a lender of last resort.

(2) Moneys of a public body to which this Act applies that are not immediately required may be invested—

- (a) in any securities of, or guaranteed by, the State; or
- (b) in any manner in which a trustee may, under any law, invest trust moneys in his hands; or
- (c) on deposit with an approved bank; or
- (d) in the securities of an authorized short-term money market; or
- (e) in any other manner approved by the Minister.

(3) The Minister may, by notice in the National Gazette, declare a public body (including a subsidiary corporation) to which this Act applies to be a public body which may, without the approval of the Minister, invest its moneys that are not immediately required, provided that each investment, whether a sale or a purchase, does not exceed a maximum level of 3% of its total assets.

(4) A notice under Subsection (3) may include investment guidelines and planning and reporting requirements.

(5) Moneys invested by a public body (including a subsidiary corporation) under Subsection (3) may not be so invested that the public body has an equity holding in any one company exceeding 10% of the issued shares of that company except with the prior written consent of the Minister.

58. APPLICATION OF MONEYS.

The moneys of a public body to which this Act applies may be applied only in payment or discharge of expenses, obligations and liabilities of the public body arising under this Act or its constituent law.

59. CONTRACTS FOR WORKS AND SERVICES.

(1) Subject to Subsection (2), tenders shall be publicly invited and contracts taken by a public body to which this Act applies for all works, supplies and services

the estimated cost of which exceeds such sum as is specified in its constituent law or declared by the Minister.

- (2) Subsection (1) does not apply to any works, supplies and services—
 - (a) that are to be executed, furnished or performed by the State, or an arm, agent or instrumentality of the State approved by the Minister for the purposes of this subsection; or
 - (b) in respect of which the public body certifies that the inviting of tenders is impracticable or inexpedient.

60. POLICY DIRECTIONS ON TENDERING.

(1) The provisions of this section apply to and in respect of all public bodies and subsidiary corporations notwithstanding any provision to the contrary in any other law and notwithstanding and without regard to any exceptions, limitations, conditions, additions or modifications contained in any other law.

(2) The Minister may, from time to time, issue directions to public bodies and subsidiary corporations on policy to be followed in relation to the giving of preference to national tenderers and local manufacturers in relation to tenders invited and contracts taken by public bodies.

(3) A public body and a subsidiary corporation shall be bound by directions issued under Subsection (2).

61. APPROVAL REQUIRED FOR CERTAIN CONTRACTS.

(1) The provisions of this section apply to and in respect of all public bodies notwithstanding any provision to the contrary in any other law and notwithstanding and without regard to any exceptions, limitations, conditions, additions or modifications contained in any other law.

(2) Subject to Subsection (3), a public body shall not, except with the approval of the Minister, enter into a contract involving the payment or receipt of an amount, or of property to a value, (or both) exceeding—

- (a) K100,000.00; or
- (b) in the case of a public body declared by the Head of State, acting on advice, by notice in the National Gazette, to be a public body to which this paragraph applies—K500,000.00.

(3) The provisions of Subsection (2) do not apply to a contract relating to investment by a public body (including a subsidiary corporation) the subject of a declaration under Section 57(3).

(4)³⁴ [*Repealed.*]

³⁴ Section 61(4) repealed by the *Public Finances (Management) (Amendment) Act 1998* (No. 14 of 1998), s7.

62. ACCOUNTS, RECORDS, ETC.

(1) Subject to Subsection (2), a public body or a subsidiary corporation to which this Act applies shall cause to be kept proper accounts and records of its transactions and affairs, and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorized and that adequate control is maintained over its assets, or assets in its custody, and over the incurring of liabilities by it.

(2) In the case of a public body or a subsidiary corporation that is declared by a constituent law or by the Minister to be a trading enterprise for the purpose of this section, the accounts and records required by Subsection (1) shall be kept in accordance with the accounting principles generally applied in commercial practice.

63. REPORTS AND FINANCIAL STATEMENTS.

(1) The provisions of this section apply to and in relation to all public bodies notwithstanding any provision to the contrary in any other law and notwithstanding and without regard to any exception, limitation, condition, addition or modification contained in any other law.

(2) A public body shall prepare and furnish to the Minister—

- (a) before 30 June in each year, a performance and management report of its operations for the year ending 31 December preceding, together with financial statements to enable the Minister to present such report and statements to Parliament at its first meeting after receipt of the report referred to in Subsection (4); and
- (b) the following reports in relation to investments made by it:—
 - (i) a quarterly report on all investment decisions; and
 - (ii) by 28 February in each year, a detailed report on investment performance and returns for the year ending 31 December preceding; and
 - (iii) a five year investment plan (updated each year) setting out investment policies, strategies and administrative systems to be pursued and providing forecasts of investment flows and returns.

(3) Financial statements under Subsection (2) shall be—

- (a) in the case of a public body declared under its constituent law to be a trading enterprise—in accordance with accounting principles generally applied in commercial practice; and
- (b) in all other cases—in a form approved by the Minister in consultation with the Auditor-General.

(4) Before furnishing financial statements to the Minister, a public body shall submit them to the Auditor-General who shall report to the Minister in accordance with Part II of the *Audit Act 1989*.

(5) The Minister shall cause the report and financial statements, together with the report of the Auditor-General, to be laid before Parliament at the first meeting of the Parliament after their receipt by the Minister.

(6) When the report or a financial statement of a public body is reproduced for publication or for other purposes, the report of the Auditor-General on it shall be included in the reproduction.

(7) The first report and financial statements of a public body under this section shall be furnished as soon as practicable after 31 December next following the commencement of its constituent law.

(8)³⁵ ³⁶Where a public body does not furnish to the Minister reports and financial statements in accordance with Subsection (2), the Minister, in consultation with the Auditor – General may –

- (a) withhold half of any of the grants appropriated to that public body for any fiscal year next following the fiscal year to which the reports and financial statements relate; and
- (b) refer the head of that body to the Public Accounts Committee for failure to comply with Subsection (2).

64. POWERS OF INSPECTION OF THE MINISTER, ETC.

(1) The provisions of this section apply to and in respect of all public bodies and subsidiary corporations of public bodies notwithstanding any provisions to the contrary in any other law and notwithstanding and without regard to any exceptions, limitations, conditions, additions or modifications contained in any other law.

(2) The Minister or the Departmental Head of the Department responsible for financial management may, where he has reason to believe that a public body has or may have failed to implement the management plan as submitted under Section 50(2) or has been or may have been in breach of this Act, authorize the Departmental Head of the Department responsible for financial management to carry out an investigation into, or inspection of, the records of that public body.

(3) Where an investigation into, or inspection of, the records of a public body is being carried out the Minister and the Departmental Head of the Department responsible for financial management have power to obtain full and free access at all reasonable times to all accounts and records of a public body and any subsidiary corporation of the public body that relate, directly or indirectly to–

- (a) the collection, receipt, expenditure and issue of moneys of the public body and any subsidiary corporation of the public body; and
- (b) the receipt, custody, disposal, issue or use of stores or other property of the public body and any subsidiary corporation of the public body.

³⁵ Section 63 Subsection (8) inserted by No. 13 of 2003, s. 1.

³⁶ Section 63 Subsection (8) inserted by No. 13 of 2003, s. 1.

(4) The Departmental Head of the Department responsible for financial management may, by written instrument, delegate to a person specified in the instrument all or any of his powers under this section (other than this power of delegation) in respect of all public bodies or of specified public bodies or of a specified public body.

PART IX. – PROVINCIAL AND LOCAL-LEVEL GOVERNMENTS.**65. CONDITIONAL GRANTS.**

(1) In accordance with the *Organic Law on Provincial Governments and Local-level Governments* conditional grants shall be made to Provincial Governments and Local-level Governments for–

- (a) provincial infrastructure development grants; and
- (b) local-level government and village services grants; and
- (c) town and urban service grants; and
- (d) conditional complementary support grants.

(2) The manner and conditions of payment of the conditional grants referred to in Subsection (1) shall be as provided in the Financial Instructions.

65A. PROVINCIAL BUDGETS.

³⁷(1) A Provincial Government shall, by a date in each year to be fixed by the Minister, prepare a budget comprising–

- (a) estimates of finance proposed to be raised or received; and
- (b) estimates of proposed expenditure,

by the Provincial Government for the next succeeding fiscal year.

(2) A Provincial Government shall, by a date in each year fixed by the Minister, submit to the Minister for approval a draft of the Budget prepared under Subsection (1).

66. INVESTMENT.

(1) In this section, “**authorized short-term money market**” means the group of dealer companies that are authorized by the Central Bank to be approved dealers on short-term loans and towards which that Bank acts as a lender of last resort.

(2) Moneys of a Provincial Government or Local-level Government to which this Act applies that are not immediately required may be invested–

- (a) in any securities of, or guaranteed by, the State; or
- (b) in any manner in which a trustee may, under any law, invest trust moneys in his hands; or
- (c) on deposit with an approved bank; or
- (d) in the securities of an authorized short-term money market; or
- (e) in any other manner approved by the Minister.

³⁷ Section 65A inserted by the *Public Finances Management (Amendment) Act 1995* (No. 38 of 1995).

(3) (3) The Minister may, by notice in the National Gazette, declare a Provincial Government or a Local-level Government to be a public body which may, without the approval of the Minister, invest its moneys that are not immediately required, provided that each investment, whether a sale or a purchase, does not exceed a maximum level of 3% of its total assets.

(4) A notice under Subsection (3) may include investment guidelines and planning and reporting requirements.

(5) Moneys invested by a Provincial Government or a Local-level Government (including a subsidiary corporation of a Provincial Government or Local-level Government) under Subsection (3) may not be so invested that the Provincial Government or Local-level Government has an equity holding in any one company exceeding 10% of the issued shares of that company except with the prior written consent of the Minister.

67. LOANS, BORROWING AND GUARANTEES.

(1) In this section—

“medium or long-term loan” means a loan other than a short-term loan;

“short-term loan” means a loan under which, by agreement or by informal arrangement, both principal and interest are payable on demand or within a period not exceeding six months, and includes a case where, by agreement or by informal arrangement, on the repayment of any such loan a further loan will or may be expected to be granted such that the total repayment period over the loan will exceed, or may be expected to exceed, six months.

(2) For the purposes of this section, money shall be deemed to have been borrowed on loan where, by agreement or arrangement, payment of any goods or services is deferred, and the period of deferment shall be deemed to be the repayment period of the loan.

(3) Subject to national laws and subject to, and in accordance with any provincial or local-level law regulating the obtaining of loans and giving of guarantees by it, a Provincial Government or Local-level Government may—

- (a) borrow money on short-term loan, or guarantee a short-term loan to any other person; or
- (b) borrow money from the State; or
- (c) with the approval of the Minister—
 - (i) borrow money on medium or long-term loan from any other person; or
 - (ii) guarantee a medium or long-term loan to any person.

68. ACCOUNTING RECORDS, ETC.

(1) A Provincial Government and a Local-level Government shall keep or cause to be kept proper accounts and records of their transactions and affairs in the manner provided by the Financial Instructions.

(2) The internal organization, accounting procedures, financial reports and financial management of a Provincial Government and of a Local-level Government shall be in the manner provided by the Financial Instructions.

69. INTERNAL CONTROL PROCEDURES.

The internal control procedures for a Provincial Government and for a Local-level Government shall be in the manner provided by the Financial Instructions.

70. PROVINCIAL AND DISTRICT TREASURY.

(1) The Departmental Head of the Department responsible for finance matters shall oversee the affairs of a Provincial and District Treasury.

(2) The Provincial Treasurer shall ensure that public moneys in the Provincial and District Treasury are managed and released strictly in accordance with law.

(3) The—

(a) functions, duties and administrative arrangements of a Provincial and District Treasury; and

(b) management of public moneys in a province,

shall be in the manner provided by Financial Instructions.

(4)³⁸ ³⁹For the purposes of this section, “**public moneys**” includes, in addition to the definition in Section 2—

(a) all moneys received from the National Government by way of grants or otherwise; and

(b) all revenue, income and receipts accruing to a Provincial Government or Local-level Government.

70A. PAYMENTS BY A PROVINCIAL GOVERNMENT OR A LOCAL-LEVEL GOVERNMENT.

⁴⁰(1) A Provincial Government and a Local-level Government shall maintain bank accounts in accordance with the Financial Instructions.

(2) No moneys shall be paid by a Provincial Government or a Local-level Government except—

(a) moneys appropriated under an Act; or

³⁸ Section 70(4) added by the *Public Finances (Management) (Amendment) Act 1998* (No. 14 of 1998), s8.

³⁹ Section 70(4) added by the *Public Finances (Management) (Amendment) Act 1998* (No. 14 of 1998), s8.

⁴⁰ Section 70A added by the *Public Finances (Management) (Amendment) Act 1998* (No. 14 of 1998), s9.

- (b) moneys deemed to have been appropriated under an Act; or
- (c) to meet expenditure that is charged on that Provincial Government or Local-level Government by a law; or
- (d) for the payment of a refund of revenue required or permitted by a law where specific authority for the payment does not exist; or
- (e) for the payment of revenue refunds provided for under any revenue law; or
- (f) subject to Subsection (3), where, at the beginning of a fiscal year—
 - (i) the respective Provincial Government or Local-level Government has not made provision for public expenditure; or
 - (ii) a relevant law relating to the appropriation of moneys has not been approved by the Minister responsible for finance matters under Section 141 of the *Organic Law on Provincial Governments and Local-level Governments*.

(3) The amounts which may be authorized under Subsection (2)(f) shall not exceed in total one third of the budgeted expenditure for the respective Provincial Government or Local-level Government during the immediately preceding fiscal year.

(4) The authority conferred by Subsection (3) lapses—

- (a) when the Provincial Government or Local-level Government has made provision for the public expenditure for the relevant fiscal year; and
- (b) a relevant law relating to the appropriation of moneys has been approved by the Minister responsible for finance matters under Section 141 of the *Organic Law on Provincial Governments and Local-level Governments*.

(5) All amounts expended pursuant to Subsection (3) are a charge against the expenditure approved under Subsection (4) and shall be properly brought to account accordingly.

71. STATEMENT OF FINANCIAL POSITION, ETC., OF PROVINCIAL GOVERNMENT AND LOCAL-LEVEL GOVERNMENT.

A statement of the financial position and affairs of a province and of a Local-level Government area required by Section 114 of the *Organic Law on Provincial Governments and Local-level Governments* shall contain such information as is specified in the Financial Instructions.

PART X. – THE PUBLIC ACCOUNTS COMMITTEE.**72. INTERPRETATION OF PART X.**

In this Part, unless the contrary intention appears–

“**the Chairman**” means the Chairman of the Committee;

“**the Committee**” means the Public Accounts Committee;

“**the Deputy Chairman**” means the Deputy Chairman of the Committee.

73. CONSTITUTION OF COMMITTEE.

(1) Subject to this section and to Subdivision VI.2.E of the *Constitution*, the Public Accounts Committee shall consist of 14 members.

(2) Members shall be appointed at the commencement of the first session of every Parliament, according to the practice of the Parliament, but subject to this Act, with reference to the appointment of members to serve on Permanent Parliamentary Committees.

(3) The Speaker and the Chairman of Committees of the Parliament may not be members of the Committee.

(4) The Committee and the members of the Committee have and may exercise such powers and authorities, may perform such duties and are liable to such obligations as are conferred or imposed on the Committee or the members of the Committee, as the case may be, by the *Constitution* and this Act.

(5) Subject to Sections 75, 76 and 77, each member of the Committee holds office during the pleasure of the Parliament.

74. DECLARATION TO BE MADE BY MEMBERS.

Before entering on the duties of his office or sitting at a meeting of the Committee, every member of the Committee shall make and subscribe a declaration in the prescribed form.

75. NORMAL TERM OF OFFICE.

Unless he earlier–

(a) dies; or

(b) resigns; or

(c) ceases to be a member of the Parliament; or

(d) is removed from the Committee by Parliament; or

(e) ceases to be a member of the Committee under Section 76 or 77,

a member of the Committee holds office until his term of office expires when the Parliament is prorogued.

76. VACATION OF OFFICE.

(1) If a member or the deputy of a member of the Committee—

- (a) dies; or
- (b) ceases to be a member of the Parliament; or
- (c) is removed by Parliament from the Committee; or
- (d) resigns by written notice to the Speaker; or
- (e) in the case of a member, fails to comply with Section 77(2),

his seat as a member, or the deputy of a member as the case may be, of the Committee, becomes vacant.

(2) Where a vacancy occurs under Subsection (1), it shall be filled as soon as practicable.

77. FAILURE TO ATTEND MEETINGS, ETC.

(1) For the purposes of this section, “**a meeting**” means a meeting of the Committee for which at least seven days’ notice to members has been given, and which—

- (a) commences when the Committee first sits following a general election, the prorogation of Parliament or an adjournment of the Committee otherwise than for a period of less than 14 days; and
- (b) ends when the Parliament is prorogued or when the Committee adjourns otherwise than for a period of less than 14 days.

(2) Subject to Subsection (3), where a member fails to attend a meeting—

- (a) without the prior leave of the Committee; or
- (b) without informing the Chairman or, if it is not practically possible to communicate with the Chairman, the Secretary of the Committee of his inability to attend,

during the whole of three consecutive meetings, his office of member of the Committee is thereby vacated.

(3) The Committee may, in its discretion, permit the office of a member of the Committee to continue where a member has failed to obtain prior leave or inform the Chairman or the Secretary of the Committee under Subsection (2).

78. QUORUM.

Four members of the Committee are a quorum at a meeting of the Committee.

79. PRESIDING AT MEETINGS.

(1) Subject to Subsection (2), the Chairman, or in the case of his absence or other disability the Deputy Chairman, shall preside at all meetings of the Committee.

(2) At a meeting of the Committee, the members in attendance may, in the absence of the Chairman and the Deputy Chairman, appoint one of their number then present to be the temporary chairman, and the temporary chairman has, during the absence of the Chairman and Deputy Chairman, all the powers given by this Act to the Chairman or Deputy Chairman.

80. VOTING.

(1) All questions that arise in the Committee shall be decided by a majority of votes of the members present, and when the votes are equal the member presiding has a second or casting vote.

(2) In all cases of divisions, the names of the persons voting shall be stated on the minutes and in the report.

81. POWER TO SIT DURING RECESS.

The Committee may—

- (a) sit and transact business during any adjournment or recess, as well as during a meeting, of the Parliament; and
- (b) sit at such times and in such places, and conduct its proceedings in such manner, as it thinks proper.

82. REPORTS.

(1) The Committee shall, before the commencement of each meeting of the Parliament, make a report to the Speaker of its proceedings under this Act.

(2) The report referred to in Subsection (1) shall be laid before the Parliament within 14 days after it is made, if the Parliament is then sitting, and, if not, then within 14 days after the commencement of the next meeting.

83. MINUTES.

The Committee shall keep full minutes of its proceedings in such manner as the Speaker directs.

84. SECTIONAL COMMITTEES.

(1) Subject to Subsection (2), the Committee may appoint a Sectional Committee or Sectional Committees of three or more of its members to inquire into and report to the Committee on such matters with which the Committee is concerned as the Committee directs.

(2) Not more than two Sectional Committees may be in existence at the same time.

(3) There shall be a Chairman and a Vice-Chairman of each Sectional Committee, each of whom shall be appointed by the Committee.

(4) This Part (other than this section and Sections 73, 74, 85 and 86) applies in relation to a Sectional Committee in the same manner as it applies in relation to the Committee, and for the purposes of this Part as so applying a reference to the Chairman or Deputy Chairman (except the references in Section 100) shall be read as a reference to the Chairman or the Vice-Chairman of the Sectional Committee.

(5) A Sectional Committee shall report in writing to the Committee as soon as practicable on each matter referred to it by the Committee.

(6) A Sectional Committee may sit notwithstanding that the Committee is sitting at the same time.

85. CONTINUANCE OF EVIDENCE.

Where the Committee as constituted at any time, or a Sectional Committee of the Committee as constituted at any time, has taken evidence in relation to a matter, but the Committee or the Sectional Committee, as the case may be, has ceased to exist before reporting on the matter, the Committee as next constituted, or a Sectional Committee to which the matter is referred, may consider that evidence as if it had been given before it.

86. FUNCTIONS OF THE COMMITTEE.

(1) The functions of the Committee are—

- (a) to examine the accounts of the receipts and expenditure of the Public Account and each statement and report of the Auditor-General presented to the Parliament under Section 214 of the *Constitution* or Section 113(8)(a) of the *Organic Law on Provincial Governments and Local-level Governments*; and
- (b) in accordance with Section 87, to examine and report on the accounts of a public body; and
- (c) to report to the Parliament, with such comments as it thinks proper, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed; and
- (d) to report to the Parliament any alteration that the Committee thinks desirable—
 - (i) in the form of the public accounts; or
 - (ii) in the method of keeping them; or
 - (iii) in the method of collection, receipt, expenditure or issue of public moneys; or

- (iv) for the receipt, custody, disposal, issue or use of stores and other property of the State; and
- (e) to inquire into any question in connection with the public accounts that is referred to it by the Parliament, and to report to the Parliament on the question,

and include such other duties as are assigned to the Committee by the Standing Orders of the National Parliament.

(2) Any member of the Parliament may move for the reference to the Committee of any question in connection with the public accounts, for report to the Parliament.

87. ACCOUNTS OF CERTAIN PUBLIC BODIES.

(1) In addition to its other functions and duties under the *Constitution* or any other law, the Committee may, of its own motion, and shall, if the Parliament so resolves, examine and report on the accounts of a public body to which this section applies in the same way as it is required to examine and report on the public accounts under Section 86.

(2) In examining and reporting on the accounts of a public body to which this section applies, the Committee may examine and report on any statement or report of the Auditor-General relating to the public body that has been presented to or tabled in the Parliament.

(3) This section applies to any governmental body, authority or instrumentality (corporate or unincorporate) established by or under an Act and also to any subsidiary company of a public body as defined in Section 48—

- (a) whose accounts are subject to examination or audit by the Auditor-General; or
- (b) for whose purposes a specified sum of money, or a sum not exceeding a specified sum, has been appropriated by the Parliament by way of grant, or to which a grant of a sum of money has been made out of the Public Account, at any time during the five full financial years—
 - (i) when the Committee acts of its own motion—immediately preceding the commencement of the examination; and
 - (ii) when a resolution referred to in Subsection (1) is passed by the Parliament—immediately preceding the date of the resolution.

(4) Where—

- (a) this section applies to a public body only because of a particular appropriation or grant of money as specified in Subsection (3)(b); and
- (b) the appropriation or grant is limited to a specific purpose,

the provisions of this section relate to the examination of and report on the accounts of the public body only so far as they relate to the application of the money

appropriated or granted for that purpose, and do not authorize an examination of those accounts beyond what is necessary to that end.

88. SITTINGS TO BE IN PUBLIC EXCEPT IN CERTAIN CASES.

(1) Subject to this section, the Committee shall take all evidence in public.

(2) The Committee may, and at the request of the witness giving the evidence must take in private, evidence, whether oral or documentary, that, in the opinion of the Committee, relates to a secret or confidential matter.

(3) Where, at the request of a witness, evidence is taken by the Committee in private—

(a) the Committee or a member must not, without the written consent of the witness; and

(b) a person other than a member must not, without the written consent of the witness and the authority of the Committee under Subsection (5),

disclose or publish the whole or a part of the evidence (other than evidence that has already been lawfully published).

(4) Where evidence is taken by the Committee in private otherwise than at the request of a witness, no person (including a member of the Committee) may, without the authority of the Committee under Subsection (5), disclose or publish the whole or a part of that evidence (other than evidence that has already been lawfully published).

(5) The Committee may, in its discretion, disclose or publish, or authorize the disclosure or publication of, evidence taken in private, but this subsection does not operate so as to affect the necessity for the consent of a witness under Subsection (3).

(6) This section has effect notwithstanding the *Parliamentary Powers and Privileges Act 1964*.

(7) A person who discloses or publishes evidence in contravention of this section is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding one year.

89. POWER TO SUMMON WITNESSES.

(1) The Committee may summon witnesses to appear before it to give evidence and produce documents.

(2) A summons to a witness—

(a) shall be in the prescribed form; and

(b) shall be signed by the Chairman or Deputy Chairman; and

(c) may be served on the witness either personally or by being left at or sent by post to his usual place of business or of abode.

90. DISOBEDIENCE OF SUMMONS.

A person on whom a summons under Section 89 has been served who refuses or fails, without reasonable excuse (proof of which is on him), to appear or to continue in attendance in obedience to the summons is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding one year.

91. PREVENTING WITNESSES FROM GIVING EVIDENCE.

A person who, by act or omission, knowingly dissuades or prevents a person from obeying a summons under Section 89 is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding one year.

92. POWER TO TAKE EVIDENCE ON OATH OR AFFIRMATION.

(1) The Committee may take evidence on oath or affirmation, and the Chairman or Deputy Chairman may administer oaths or affirmations to witnesses appearing before the Committee.

(2) The oath or affirmation administered to a witness may be in the prescribed form.

(3) A witness who objects to taking an oath shall not be compelled to take an oath, but may be compelled to make an affirmation.

93. REFUSING TO BE SWORN, ETC.

A person who, without reasonable excuse (proof of which is on him), refuses—

(a) to be sworn or make affirmation; or

(b) to answer a question put to him by the Committee or by a member of the Committee; or

(c) to produce a document that he is required by the Committee to produce,

is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding one year.

94. PRIVILEGES OF WITNESSES.

A witness summoned to appear or appearing before the Committee has the same protection and privileges as a witness in a case tried in the National Court.

95. PROTECTION TO WITNESSES.

A person who uses, causes, inflicts or procures any violence, punishment, damage, loss or disadvantage to or on any person for or on account of evidence lawfully given by him before the Committee, is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding one year.

96. FALSE EVIDENCE.

A person who wilfully gives false evidence on oath or affirmation before the Committee is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding five years.

97. WITNESSES' EXPENSES.

A witness appearing before the Committee to give evidence shall be paid such witness fees and travelling expenses as the Chairman or Deputy Chairman thinks fit to allow, in accordance with the prescribed scale.

98. PROCEEDINGS TO BE INSTITUTED BY PUBLIC PROSECUTOR.

Proceedings for offences against this Part shall be instituted only by the Public Prosecutor or by his direction.

99. ALLOWANCES.

(1) The Chairman and other members of the Committee shall be paid allowances in accordance with the scale provided for members of the Parliament, or with such other scale as is prescribed.

(2) The allowances of the members of the Committee are payable on the certificate of the Chairman or the Deputy Chairman.

100. ANNUAL REPORT BY CHAIRMAN ON EXPENDITURE.

As soon as practicable after the end of each financial year, the Chairman shall present to the Parliament a report setting out—

- (a) the total amount paid out of the Consolidated Revenue Fund during the immediately preceding fiscal year in accordance with Section 99; and
- (b) details of each amount so paid; and
- (c) details of the purposes for which the liability to pay each such amount was incurred.

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101. GAZETTAL OF COMMITTEE.

The names of the members of the Committee and of the deputies shall be published in the National Gazette.

PART XI. – SURCHARGE.

102. IMPOSITION OF SURCHARGE.

Where it appears–

- (a) in any case–to the Departmental Head of the Department responsible for financial management; or
- (b) in the case of matters administered by a Department–to the Departmental Head of that Department; or
- (c) in the case of matters administered by a Provincial Government–to the Provincial Administrator of the province,

that any person who is or has been an accountable officer–

- (d) has wilfully or negligently omitted to collect or receive any moneys for the collection or receipt of which he was responsible; or
- (e) has failed to account for any moneys; or
- (f) has been responsible for any improper payment of public moneys or for any payment of public moneys that was not vouched and authorized; or
- (fa)⁴¹ has authorized or permitted a breach of procedures relating to–
 - (i) the calling, considering and awarding of tenders; or
 - (ii) the execution of a State Contract; or
- (g) has been responsible for any deficiency in or for the loss or destruction of or damage to any public moneys, stamps, securities, stores or other State property; or
- (h) has overcommitted funds under his control or failed to comply with any of the provisions of this Act or of the *Organic Law on Provincial Governments and Local-level Governments*; or
- (i) has approved requisitions for the expenditure of public moneys without observing the prescribed procedures, rules or provisions of the Act or Financial Instructions or of the *Organic Law on Provincial Governments and Local-level Governments*; or
- (j) has failed to deposit forthwith the money collected by him into the Public Account,

the–

- (k) Departmental Head of the Department responsible for financial management; or
- (l) the Departmental Head of that Department; or
- (m) the Provincial Administrator of the province,

⁴¹ Section 102(fa) inserted by the *Public Finances (Management) (Amendment) Act 1998* (No. 14 of 1998), s10(a).

may, subject to Section 103, surcharge him with a sum that does not exceed—

- (n) any amount not collected, received, accounted for, improperly paid, not vouched or authorized or the amount of any deficiency; or
- (o) the value of any property lost or damaged; or
- (p) the value of any property damaged or, in the discretion of the Departmental Head of the Department responsible for financial management, the cost of repairs; or
- (q)⁴² in a case to which Paragraph (fa) relates, the amount of any improper payment or other loss of public moneys.

103. PROCEDURE FOR IMPOSITION OF A SURCHARGE.

(1) Before imposing a surcharge under Section 103, the—

- (a) Departmental Head of the Department responsible for financial management; or
- (b) the Departmental Head of a Department,

as the case may be, shall—

- (c) forward to the person against whom it is proposed to make the surcharge a notice in the prescribed form; and
- (d) consider any submissions made by that person within the period specified in the notice,

and in the light of those submissions may decide—

- (e) to impose a surcharge for the amount specified in the notice or for a different amount; or
- (f) not to impose a surcharge.

(2) Where the—

- (a) Departmental Head of the Department responsible for financial management; or
- (b) the Departmental Head of a Department,

as the case may be, imposes a surcharge he shall forward to the person surcharged a notice in the prescribed form.

(3) Where the—

- (a) Departmental Head of the Department responsible for financial management; or
- (b) the Departmental Head of a Department,

as the case may be, forwards a notice under Subsection (1) to a person and later decides not to impose a surcharge, he shall so notify the person.

⁴² Section 102(q) inserted by the *Public Finances (Management) (Amendment) Act 1998* (No. 14 of 1998), s10(b).

104. ANNULLMENT OF SURCHARGE.

The Minister may, at any time, annul a surcharge and any amount paid in consequence of it shall be refunded.

105. APPEAL AGAINST SURCHARGE.

(1) In this section, “**the appellant authority**” means a person or authority appointed by the Head of State, acting on advice, for the purpose.

(2) A person on whom a surcharge has been imposed may appeal to the appellant authority within the period of one month after he has been notified of the surcharge or within such further period as the appellant authority allows (whether before or after the expiration of that period of one month).

(3) After such investigation as it thinks proper, the appellant authority may make such order as it thinks proper—

- (a) confirming the surcharge; or
- (b) annulling it in whole or in part.

106. RECOVERY OF AMOUNT OF SURCHARGE.

(1) The amount of surcharge may be recovered as a debt from the person on whom it was imposed.

(2) Notwithstanding any other law, the Departmental Head of the Department responsible for financial management may direct that the amount of a surcharge imposed on any person employed by the State be deducted from any moneys paid or payable to that person by the State arising out of his employment by the State.

PART XII. – MISCELLANEOUS.**107. EX GRATIA PAYMENTS.**

(1) Where, in the opinion of–

- (a) the Minister; or
- (b) the Departmental Head of the Department responsible for financial management,

it is expedient to do so, he may make an *ex gratia* payment of public moneys to any person in an amount not exceeding the prescribed amount.

(2) Where, in the opinion of the Minister it is expedient to do so, he may, with the approval of the National Executive Council, make an *ex gratia* payment of the public moneys to any person in an amount exceeding the prescribed amount.

(3) Where, in the opinion of–

- (a) the Minister; or
- (b) the Departmental Head of the Department responsible for financial management,

it is expedient that a payment of public moneys to a person, being a payment in an amount not exceeding the prescribed amount, be treated as an *ex gratia* payment,

- (c) the Minister; or
- (d) the Departmental Head of the Department responsible for financial management,

as the case may be, may approve the payment and the payment so approved shall be deemed to be an *ex gratia* payment under Subsection (1).

(4) Where the National Executive Council resolves that it is expedient that a payment of public moneys to a person, being a payment in an amount exceeding the prescribed amount, be treated as an *ex gratia* payment, the National Executive Council may approve that payment and the payment so approved shall be deemed to be an *ex gratia* payment made under Subsection (2).

(5) Until an amount is prescribed by the Regulation, the prescribed amount is–

- (a) in the case of the Minister–K50,000.00; and
- (b) in the case of the Departmental Head of the Department responsible for financial management–K25,000.00.

(6) This section shall not be taken to be an appropriation of public moneys.

108. WRITING OFF.

The Minister or the Departmental Head of the Department responsible for financial management may write off–

- (a) losses and deficiencies of public moneys; and

- (b) irrecoverable amounts of revenue; and
- (c) irrecoverable debts and overpayments; and
- (d) the value of lost, deficient, condemned, unserviceable or obsolete stores.

109. WAIVER OF FEES.

(1) The Minister may—

- (a) waive, reduce or defer an amount of—
 - (i) fees or forfeitures; or
 - (ii) fines or penalties in respect of fees; or

(b) by agreement, vary rent or royalties chargeable under any law.

(2) Nothing in Subsection (1) affects any power of waiver, reduction, deferment or variation conferred by any other law.

110. DELEGATION.

A Departmental Head may, by instrument, delegate to a person all or any of his powers and functions under this Act (other than this power of delegation).

111. LAWS OF ANOTHER COUNTRY MAY APPLY TO FINANCIAL OPERATIONS OF CERTAIN AGENTS OF THE STATE.

(1) In this section, “**approved overseas agency**” means—

- (a) the government; or
- (b) a government department; or
- (c) a government instrumentality; or
- (d) a statutory corporation,

of a country other than Papua New Guinea approved by the Minister by notice in the National Gazette.

(2) Subsection (3) applies where an approved overseas agency acts as agent for the State (whether within or outside the country) for any purpose, and in so doing is responsible for—

- (a) the collection, receipt, expenditure or issue of public moneys on behalf of the State; or
- (b) the receipt, custody, disposal, issue or use of stores or other property of the State.

(3) If in a case to which this subsection applies, a person approved by the Minister for the purpose on the nomination of the approved overseas agency certifies that in respect of any period—

- (a) the collection, receipt, expenditure or issue of public moneys on behalf of the State; or
- (b) the receipt, custody, disposal, issue and use of stores and other property of the State,

was in accordance with the procedures laid down by or under the law of the country to which the approved overseas agency belongs that relates to the control, management and audit of public finance and property, those matters shall, for all purposes of this Act and any other law, be deemed to have been properly dealt with according to law.

112. OFFENCES.

(1) A person who—

- (a) in connection with an inspection or inquiry under this Act refuses or wilfully neglects to attend at a time and place required of him by the Minister, the Auditor-General or the Departmental Head of the Department responsible for financial management; or
- (b) refuses or wilfully neglects to produce any book or account or other document in his possession when required to do so under this Act or the *Organic Law on Provincial Governments and Local-level Governments*; or
- (c) refuses to answer any lawful question put to him by any person under this Act; or
- (d) refuses or neglects to pay any public money into the account or fund into which it is payable; or
- (e) refuses or wilfully neglects to provide reports under Section 4; or
- (f) without due care, overcommits funds under his control,

is guilty of an offence.

Penalty: In the case of an offence by an individual person, a fine not exceeding K20,000.00 and suspension without pay; in the case of an offence by a person other than an individual person, a fine not exceeding K50,000.00.

Default penalty: K200.00.

(2) A penalty under Subsection (1) may be imposed in addition to any surcharge under Section 102.

113. DISCIPLINARY ACTION.

An accountable officer who has committed or is responsible for any or all financial irregularities specified in Section 102 is also guilty of an offence under Section 112 and is further liable to disciplinary action under the *Public Services (Management) Act 1995* and General Orders made thereunder.

114. TIME FOR COMMENCING PROCEEDINGS.

Notwithstanding the provisions of any other law, a prosecution against any person for an offence under Section 112(1)(a), (b) or (c) must be commenced within two years of—

- (a) the date on which the offence was committed; or
- (b) where the offence was committed on more than one date—the latest date on which it was committed,

and not otherwise.

114A. DISCIPLINING OF DEPARTMENTAL HEADS, ETC., IN CERTAIN CIRCUMSTANCES.

⁴³(1) For the purposes of this section, “**appointing authority**” means the authority by whom, under a Constitutional Law or an Act of Parliament, a Departmental Head or chief executive of a public body is appointed.

(2) Where—

- (a) a Departmental Head; or
- (b) the chief executive of a public body,

authorizes expenditure—

- (c) over the approved aggregate ceiling for the Department or public body, as the case may be; or
- (d) in advance of the issuance of warrant authority under this Act,

the appointing authority may suspend without pay the Departmental Head or the chief executive, as the case may be, with effect on and from the date on which the Departmental Head of the Department responsible for finance matters certifies the unauthorized expenditure.

(3) A Departmental Head or chief executive suspended under Subsection (1) may within 14 days of the date of such suspension make written submissions to the appointing authority as to the circumstances giving rise to the unauthorized expenditure.

(4) After the expiry of 14 days from the date of the suspension the appointing authority, after considering any submission made under Subsection (2), may uplift the suspension or terminate the appointment of the Departmental Head or chief executive.

115. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or

⁴³ Section 114A added by the *Public Finances (Management) (Amendment) Act 1996* (No. 49 of 1996).

giving effect to this Act, and in general for the better control and management of public moneys and public property.

116. DIRECTIONS AS TO MONEYS OUTSIDE THE COUNTRY.

(1) The Minister may give such directions as he thinks necessary for or in relation to—

- (a) the collection, receipt, custody, expenditure, control, management and use, outside the country, of public moneys and stores and other property of the State, and the due accounting for such moneys, stores and property; and
- (b) the keeping of accounts and records and the furnishing of statements, returns and vouchers in respect of the matters referred to in Paragraph (a); and
- (c) the execution of works and supply of services outside the country for or by the State; and
- (d) the purchase outside the country of stores for or by the State; and
- (e) the custody, issue, sale or other disposal and writing off of stores and other property of the State outside the country, and the proper accounting for and stocktaking of such stores and property; and
- (f) the inspection and examination (other than by the Auditor-General), and the Departmental check, of accounts and records prepared or kept outside the country in respect of public accounts and stores and other property of the State.

(2) Directions under Subsection (1) have effect notwithstanding any other provisions of this Act.

117. FINANCIAL INSTRUCTIONS.

The Departmental Head of the Department responsible for financial management may issue Financial Instructions, not inconsistent with this Act, as to any matter prescribed by this Act to be so provided for, or that are necessary or desirable for carrying out or giving effect to this Act and in general for the better control and management of public moneys and public property.

PART XIII. – REPEAL.

118. REPEAL.

The Acts specified in Schedule 1 are repealed.

PART XIV. – TRANSITIONAL.**119. INTERPRETATION.**

In this Part–

“**former Committee**” means the Public Accounts Committee constituted under the repealed Public Finances Act;

“**the repealed Public Finances Act**” means the *Public Finances (Management) Act 1986* as amended up to immediately before the coming into operation of this Act, and includes all Regulations, Financial Instructions and financial directions under that Act.

120. REFERENCE TO CONSOLIDATED REVENUE FUND.

A reference in any law of Papua New Guinea in force immediately before the coming into operation of this Act to the Consolidated Revenue Fund, or any similar expression, shall, on that coming into operation, be read as a reference to the Consolidated Revenue Fund established under Section 10.

121. TRANSFER OF SUMS AT CREDIT OF CONSOLIDATED REVENUE FUND.

All moneys standing to the credit of the Consolidated Revenue Fund established under Section 10 of the repealed Public Finances Act immediately before the coming into operation of this Act are, on that coming into operation, transferred to and stand to the credit of the Consolidated Revenue Fund established under Section 10 of this Act.

122. REFERENCE TO TRUST FUND AND TRUST ACCOUNTS.

Any reference in any law of Papua New Guinea in force immediately before the coming into operation of this Act to–

- (a) the Trust Fund; or
- (b) a Trust Account,

shall, on that coming into operation, be read as a reference to–

- (c) the Trust Fund established under Section 10; or
- (d) the appropriate Trust Account established under, or deemed by Section 123 to have been established under Section 15.

123. TRANSFER OF TRUST ACCOUNTS, ETC.

(1) Each head of the Trust Fund and each Trust Account established under or deemed to have been established under the repealed Public Finances Act in existence immediately before the coming into operation of this Act, shall be deemed, on that

coming into operation, to be established as a Trust Account established under Section 15, for the same purposes as before.

(2) All moneys standing to the credit of a head of the Trust Fund or a Trust Account under the repealed Public Finances Act immediately before the coming into operation of this Act are, on that coming into operation, transferred to and stand to the credit of the appropriate Trust Account deemed to be established by Subsection (1).

124. FORMER INVESTMENTS.

All public moneys invested or deemed to have been invested, immediately before the coming into operation of this Act under the repealed Public Finances Act, shall be deemed, on that coming into operation, to be public moneys duly invested in the name of the State under Section 12.

125. UNCLAIMED TRUST FUND MONEYS.

In the case of moneys standing to the credit of the Trust Fund under the repealed Public Finances Act immediately before the coming into operation of this Act, the period of two years referred to in Section 20 shall be deemed to have commenced to run when they were placed to the credit of that Fund.

126. FORMER WARRANTS, ETC.

(1) All warrants under Section 29 of the repealed Public Finances Act in force immediately before the coming into operation of this Act shall, on that coming into operation, be deemed to be warrants under Section 29 of this Act.

(2) All warrant authorities under Section 31 of the repealed Public Finances Act in force immediately before the coming into operation of this Act shall, on that coming into operation, be deemed to be warrants issued under Section 31 of this Act.

127. CONTINUANCE OF FORMER ACTS, ETC.

All acts, matters or things done or suffered or deemed to have been done or suffered or taken, or procedural steps taken under or for the purposes of a provision of the repealed Public Finances Act and having effect immediately before the coming into operation of this Act, shall, after that coming into operation, be deemed to have been done or suffered or taken under, or for the purpose of, this Act.

128. TRANSITIONAL FINANCIAL INSTRUCTIONS, ETC.

Subject to this Act, until Financial Instructions and financial directions are given under this Act, the provisions of and procedures laid down in Financial Instructions and financial directions under the repealed Public Finances Act shall apply and shall be complied with as if given under this Act.

129. REFERENCES TO REPEALED ACT.

Any reference in any law in force as at the date of the coming into operation of this Act to a provision of—

- (a) the *Public Bodies (Financial Administration) Act (Chapter 6) (repealed)*; or
- (b) the *Government Contracts Act (Chapter 34) (repealed)*; or
- (c) the *Public Finances (Control and Audit) Act (Chapter 36) (repealed)*; or
- (d) the repealed Public Finances Act,

shall, on that coming into operation, be read as a reference to the equivalent provision of this Act.

130. MEMBERS OF THE PUBLIC ACCOUNTS COMMITTEE.

(1) The persons who, immediately before the coming into operation of this Act, were the Chairman, Vice-Chairman and other members of the former Committee shall be deemed, on that coming into operation, to have been respectively appointed under Section 73 to be the Chairman, Vice-Chairman and other members of the Public Accounts Committee.

(2) A person who, immediately before the coming into operation of this Act, was a deputy of a member of the former Committee shall be deemed, on that commencement, to have been appointed as his deputy under Section 73(2).

(3) A person referred to in Subsection (1) or (2) shall be deemed to have made and subscribed the declaration referred to in Section 74.

131. SECTIONAL COMMITTEES.

(1) Any Sectional Committees of the former Committee in existence immediately before the coming into operation of this Act shall be deemed, on that coming into operation, to have been appointed by the Public Accounts Committee for the same respective purposes as those for which they were appointed by the former Committee.

(2) The persons who, immediately before the coming into operation of this Act, were the Chairman, Vice-Chairman and other members of a Sectional Committee of the former Committee shall be deemed, on that commencement, to have been appointed under Section 84 to be the Chairman, Vice-Chairman and other members of the appropriate Sectional Committee deemed to have been appointed by Subsection (1).

132. CONTINUANCE OF EVIDENCE.

(1) Any evidence taken by the former Committee or a Sectional Committee of the former Committee may be considered by the Public Accounts Committee or a Sectional Committee of the Public Accounts Committee as if it had been given before it.

(2) For the purposes of any report under this Act, the Public Accounts or a Sectional Committee of the Public Accounts Committee may make use of the results of any examination or inquiry made by the former Committee or a Sectional Committee of the former Committee.

133. REPORTS.

If, on the coming into operation of this Act, the former Committee has not made a report to the Parliament on a matter on which it was its duty to report, the Public Accounts Committee shall make the report.

SCHEDULE 1 – ACTS REPEALED.

Sec. 118.

Public Finances (Management) Act 1986 (No. 35 of 1986)

Public Finances (Management) (Amendment) Act 1986 (No. 48 of 1986)

Public Finances (Management) (Amendment) Act 1987 (No. 46 of 1987)

Constitutional Changes (Consequential Amendment) Act 1988 (No. 17 of 1988) (Part III only)

Public Finances (Management) (Amendment) Act 1988 (No. 24 of 1988)

Public Finances (Management) (Amendment) Act 1991 (No. 3 of 1991)

Public Finances (Management) (Amendment No. 2) Act 1991 (No. 15 of 1991)

Public Finances (Management) (Amendment) Act 1992 (No. 18 of 1992)

Public Finances (Management) (Amendment) Act 1992 (No. 25 of 1992)

Public Finances (Management) Act 1994 (No. 48 of 1994).