

No. 32 of 2014.

***Small and Medium Enterprises Corporation Act 2014.***

Certified on : **21 OCT 2014**



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No. of 2014.

An Act

entitled

***Small and Medium Enterprises Corporation Act 2014,***

Being an Act to -

- (a) establish the Small and Medium Enterprises Corporation; and
  - (b) establish the Small and Medium Enterprises Development Council; and
  - (c) repeal the ***Small Business Development Corporation Act 1990***,
- and for related purposes.

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

**PART I. - PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

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

- (a) the right to freedom of expression and publication conferred by Section 46; and
- (b) the right to freedom of assembly and association conferred by Section 47; and
- (c) the right to freedom of choice of employment conferred by Section 48; and
- (d) the right to freedom of privacy conferred by Section 49,

of the ***Constitution***, is a law that is made (pursuant to Section 38 of the ***Constitution***), taking account of the National Goals and Directive Principles and the Basic Social Obligations, in particular the National Goals and Directive Principles namely -

- (e) integral human development; and
- (f) equality and participation; and
- (g) national sovereignty and self-reliance; and
- (h) natural resources and environment; and
- (i) Papua New Guinea ways,

for the purpose of giving effect to the public interest in public order and public welfare.

(2) For the purposes of Section 41 of the ***Organic Law on Provincial Governments and Local-level Governments***, it is declared that this Act relates to a matter of national interest.

**2. INTERPRETATION.**

In this Act, unless the contrary intention appears -

“Authorised Institution” has the meaning given to it in Section 3(1) of the ***Banks and Financial Institutions Act 2000***;

“Board” means the Board of the Small and Medium Enterprises Corporation;

“Chairperson” means the Chairperson of the Small and Medium Enterprises Corporation Board;

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- “Company” means a company incorporated under the *Companies Act 1997*;
- “Corporation” means the Small and Medium Enterprises Corporation established under Section 4;
- “Council” means the national Small and Medium Enterprises Development Council established under Section 21;
- “financial institutions” means the financial institutions declared under the *Banks and Financial Institutions Act 2000*;
- “former Corporation” means the Small Business Development Corporation as constituted immediately before the coming into operation of this Act;
- “Fund” means the Small and Medium Enterprises Development Fund established under Section 34;
- “small and medium enterprises” means enterprises as may be determined by the Council;
- “this Act” includes any regulations made under it.

### **3. APPLICATION OF THIS ACT.**

(1) This Act binds the State.

(2) For the avoidance of doubt and subject to this Act, the Corporation is an instrument of the State and is entitled to the benefit of any immunity or privilege which the State is entitled to.

## **PART II. - ESTABLISHMENT AND FUNCTIONS, ETC., OF THE SMALL AND MEDIUM ENTERPRISES CORPORATION.**

### **4. ESTABLISHMENT OF THE SMALL AND MEDIUM ENTERPRISES CORPORATION.**

The Small and Medium Enterprises Corporation is hereby established.

### **5. INCORPORATION OF THE CORPORATION.**

(1) The Corporation -

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

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

### **6. FUNCTIONS OF THE CORPORATION.**

The functions of the Corporation are -

- (a) to co-ordinate, monitor and evaluate the implementation of the policies, strategies and programs for small and medium enterprises in accordance with the Small and Medium Enterprises Policy, the Master Plan of the Government as directed by the Small and Medium Enterprises Development Council and the Ministry responsible for trade, commerce and industry matters; and
- (b) to undertake studies concerning the development of small and medium enterprises; and
- (c) to liaise with the National Executive Council or relevant Ministry in the implementation of the policies, strategies and programmes for small and medium enterprises; and

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- (d) being responsible for collecting, sourcing, keeping and disseminating information on small and medium enterprises; and
- (e) to act as the Secretariat to the Council; and
- (f) in the manufacturing and services sectors -
  - (i) to undertake promotional activities to promote the growth of small and medium enterprises; and
  - (ii) to promote co-operation amongst small and medium enterprises; and
  - (iii) to encourage industrial linkages with large industries; and
  - (iv) to develop human resource in the small and medium enterprises; and
- (g) to undertake any work and investments necessary to promote and grow the small and medium enterprises sector in the economy.

### **7. POWERS OF THE CORPORATION.**

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

- (2) Without limiting the generality of Subsection (1), the Corporation has power -
- (a) to establish and maintain branch offices with the approval of the Minister; and
  - (b) to appoint agents or procure goods and services for the purposes of carrying out its functions under this Act; and
  - (c) to establish, maintain and manage a database and information system on small and medium enterprises which includes the profile, economics and statistical data on the development programmes from any ministry or government agency; and
  - (d) with the approval of the Minister, to acquire and hold venture capital in a company -
    - (i) to give grants or other financial assistance to small and medium enterprises; and
    - (ii) to obtain information regarding the business activities of small and medium enterprises; and
    - (iii) to develop small and medium enterprises; and
  - (e) to organise promotional activities for small and medium enterprise which include participation in trade exhibitions, seminars and conferences in and outside the country; and
  - (f) to publish or sponsor the publication of periodicals, booklets and other information materials on small and medium enterprises; and
  - (g) to charge a fee for the use of any facilities or services provided by the Corporation.

### **PART III. - THE BOARD.**

#### **8. THE BOARD.**

- (1) The Board of the Corporation is hereby established.
- (2) The Board shall consist of -
- (a) the departmental head of the Department responsible for trade and industry matters or his nominee, *ex officio*; and
  - (b) the departmental head of the Department responsible for planning matters or his nominee, *ex officio*; and
  - (c) the Managing Director of the Small and Medium Enterprises Corporation or his nominee, *ex officio*; and
  - (d) a representative from each of the four regions of Papua New Guinea who are currently business men or women; and

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- (e) a representative from the financial sector; and
- (f) a representative from the youth in business.

(3) The Board members -

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

(4) The Chairperson and Deputy Chairperson of the Board shall be appointed by the National Executive Council upon recommendation by the Minister for a term of four years.

(5) An *ex officio* member is not eligible for appointment as Chairperson or Deputy Chairperson.

### **9. ELIGIBILITY TO BE A MEMBER OF THE BOARD.**

A person shall not be appointed or remain as a member of the Board if he -

- (a) is or has been bankrupt, or has applied to take the benefit of any law for the benefit of bankrupt or insolvent debtors, or has compound with his creditors or made assignment of his remuneration for their benefit; or
- (b) is 65 years of age or over; or
- (c) is standing or to stand trial for, or has been convicted of, any offence punishable under a law by imprisonment; or
- (d) is prohibited from being a director or member or promoter of, or from taking part (in any way, whether directly or indirectly) in the management of a company under any law; or
- (e) has his affairs administered under any law relating to mental health.

### **10. ALTERNATE MEMBERS.**

(1) A member of the Board appointed under Section 8 may, by a signed instrument in writing delivered to the Board, appoint a person who is ordinarily resident in the country to be the member's alternate.

(2) If a member of the Board appointed under Section 8 is for any reason unable to act, his alternate, if there is any, has and may exercise all of the member's powers, function, duties and responsibilities, and this Act applies accordingly.

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

(4) An alternate is entitled independently to receive all notices, papers, minutes of meetings and other relevant information to which members of the Board are entitled.

(5) A signed instrument under Subsection (1) shall specify the period of the alternate member's appointment unless the alternate member either resigns or the appointment is revoked.



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**11. LEAVE OF ABSENCE OF MEMBERS.**

(1) The Chairperson may grant leave of absence to a member of the Board (other than the Deputy Chairperson) on such terms and conditions as the Chairperson determines.

(2) The Board may grant leave of absence to the Chairperson or Deputy Chairperson on such terms and conditions as the Board determines.

**12. VACATION OF OFFICE.**

(1) A member other than an *ex officio* member, may resign from his office by writing to the Corporation.

(2) If a member of the Board, other than an *ex officio* member -

(a) dies or becomes permanently incapable of performing his duties; or

(b) resigns his office in accordance with Subsection (1); or

(c) is absent, except with the written consent of the Board or is on leave of absence under Section 11, from three consecutive meetings of the Board; or

(d) does not comply with Section 16; or

(e) becomes a person who is not eligible under Section 9 to be appointed as a member of the Board; or

(f) ceases to be ordinary resident in the country; or

(g) is convicted of a criminal offence; and

(h) commits an offence against this Act,

the Minister shall terminate his appointment.

(3) The Minister, acting on the advice and recommendation of the Board but not otherwise, may at any time, by written notice, inform a member (other than an *ex officio* member) that he intends to terminate the member's appointment on the grounds of inefficiency, incapacity or misbehaviour.

(4) Within 14 days after receiving a notice under Subsection (3), the member may reply in writing to the Minister, who must consider the reply and, where appropriate, terminate the appointment by written notice to the member.

(5) Where the member referred to in Subsection (3) does not reply in accordance with Subsection (4), the Minister may terminate the member's appointment by written notice to the member.

(6) Subsection (2) applies to an alternate member.

**13. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.**

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

**14. SECRETARY OF THE BOARD.**

(1) The Board shall appoint an employee of the Corporation on recommendation of the Managing Director as Secretary, who will be responsible for convening meetings, recording meetings for the Board and undertaking other administrative, legal and statutory functions of the Board.

(2) The Secretary of the Board shall be a lawyer practising under the *Lawyers Act 1986*.

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**15. MEETINGS OF THE BOARD.**

(1) The Board shall meet as often as the business of the Board requires, and at such times and places as the Board determines, or as the Chairman, or in his absence, the Deputy Chairman directs, but in any event shall meet once in every three months.

(2) The Chairman or the Deputy Chairman, as the case may be, shall give to every member at least seven days' notice of the meeting.

(3) An irregularity in the notice of a meeting of the Board is waived where all members of the Board entitled to receive the notice either attend the meeting without protest as to the irregularity or agree to the waiver.

(4) At a meeting of the Board -

- (a) subject to Subsection (6), the Chairperson or in his absence, the Deputy Chairperson and five other members, of which two shall be *ex officio* members and three shall be non *ex officio* members, constitute a quorum; and
- (b) the Chairperson, or in his absence, the Deputy Chairperson shall preside and if both the Chairperson and Deputy Chairperson are absent, the members present may appoint, from among them, a chairperson for that meeting; and
- (c) subject to Paragraph (e), each member of the Board has one vote; and
- (d) subject to Section 33(3)(c), matters arising shall be decided by a majority of the votes of the members present and voting; and
- (e) the person presiding has a deliberative, and if there is an equality of votes on any matter, also a casting vote.

(5) The Board shall cause minutes of its meetings to be recorded and kept and determine its own procedures.

(6) At the meeting of the Board at which consideration of the investigations, suspension or recommendation for dismissal of the Managing Director under Section 28(4) and (5) is made -

- (a) seven members of the Board, other than the Managing Director, constitute a quorum; and
- (b) if the members present so permit, the Managing Director may be present, but may not vote or participate in any discussion or debate other than at a time determined by the members present to answer or defend any allegation against him; and
- (c) no other business or matter may be transacted, considered or dealt with.

**16. DISCLOSURE OF INTEREST BY MEMBERS OF THE BOARD.**

(1) A member who has a direct or indirect interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board and the discloser shall be recorded in the minutes of the meeting.

(2) The Board member making the disclosure shall -

- (a) not participate, after the disclosure, in any debate, deliberation, decision or vote of the Board in relation to the matter during the meeting at which the disclosure is made or at any other meeting of the Board; and
- (b) be disregarded for the purpose of determining whether a quorum is present.

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### **17. COMMITTEES OF THE BOARD.**

(1) The Board may, from time to time, establish Committees of the Board to advise the Board on such matters as the Board considers necessary.

- (2) The Board may establish -
- (a) a Recruitment and Remuneration Committee; and
  - (b) an Audit Committee; and
  - (c) an Investment Committee; and
  - (d) any other Committee it considers appropriate.

(3) In addition to the other members of a Committee appointed under Subsection (4), the Board shall appoint at least one member of the Board to be a member of the Committee.

- (4) In establishing a Committee under Subsection (1), the Board may -
- (a) appoint such persons as it considers necessary; and
  - (b) specify the purpose, functions and procedures of the Committee.

- (5) The Board may -
- (a) further instruct or direct the Committee on such matters relevant to the purpose for which the committee was established; and
  - (b) revoke the appointment of any member of the Committee or appoint such other persons to be members of the Committee; and
  - (c) approve the engagement of any person to provide any required expert or technical assistance to the Committee.

(6) A member of a Committee who is not a member of the Board, an employee of the Corporation or an officer of the National Public Service may receive fees and allowances under the *Boards (Fees and Allowances) Act* (Chapter 299).

(7) For purposes of Subsection (5)(c), the Board shall remunerate any person who provides expert or technical assistance to the Committee.

### **18. DELEGATION.**

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

(2) Without limiting the generality of Subsection (1), the Board may delegate to either the Chairperson or the Managing Director the power to approve expenditure from the Fund or any moneys of the Board up to a limit prescribed by the Board.

### **19. REPORTS.**

The Board shall furnish to the Minister, in addition to the annual report under Section 40, such other reports in relation to the functions of the Corporation as reasonably requested by the Minister from time to time.

### **20. FEES AND EXPENSES OF MEMBERS OF THE BOARD AND ALTERNATES.**

(1) As soon as practicable after the coming into operation of this Act, the Board shall recommend to the Minister an appropriate fee to be paid under the *Boards (Fees and Allowances) Act* (Chapter 299) to each member of the Board, other than an *ex officio* member, having regard to the functions, duties and responsibilities of the members under this Act.

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(2) Each member of the Board, other than an *ex officio* member, shall be paid a fee as the Minister determines after considering the recommendation of the Board under Subsection (1).

(3) The Corporation shall pay to each member travelling and other expenses as determined by the Corporation, incurred in carrying out their duties under this Act.

(4) An alternate of a member, other than an *ex officio* member, shall, when attending a Board meeting in the place of the member who appointed him, be paid by the Board the applicable fee and any other expenses.

### **PART IV. - SMALL AND MEDIUM ENTERPRISE DEVELOPMENT COUNCIL.**

#### **21. ESTABLISHMENT OF THE SMALL AND MEDIUM ENTERPRISE DEVELOPMENT COUNCIL.**

(1) The Small and Medium Enterprises Corporation Council for the Corporation is hereby established.

(2) Subject to Section 24, the Council shall perform the functions, exercise the powers and manage and direct the administrative affairs of the Corporation.

(3) Notwithstanding anything in this Act, the Managing Director has the sole right and responsibility, to the exclusion of the Council, to supervise and direct the staff of the Corporation in the exercise of all powers, functions and discretions in respect of the administration of the Corporation under the Act or any other legislation, regulation or national policy relating to small and medium enterprises.

#### **22. MEMBERSHIP OF THE COUNCIL.**

The Council shall consist of -

- (a) the Prime Minister as the Chairperson; and
- (b) the Minister responsible for trade and industry matters as the Deputy Chairperson; and
- (c) the Minister responsible for planning matters; and
- (d) the Minister responsible for agriculture and agro-based industry; and
- (e) the Minister responsible science, technology and innovations; and
- (f) the Minister responsible for finance; and
- (g) the Minister responsible for education; and
- (h) the Minister responsible for tourism; and
- (i) the Minister responsible for treasury; and
- (j) the Minister responsible for state enterprises; and
- (k) the Minister responsible for mining; and
- (l) the Minister responsible for petroleum; and
- (m) the Minister responsible for forestry; and
- (n) the Minister responsible for fisheries and marine resources; and
- (o) the Minister responsible for community development; and
- (p) the Chief Secretary to the Government; and
- (q) the Governor of the Bank of Papua New Guinea; and
- (r) the Chairperson of the National Development Bank; and
- (s) the Chairperson or a representative of the Indigenous Business Council; and
- (t) the President or a representative of the Rural Industries Council; and

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- (u) the President or a representative of the PNG Chamber of Commerce; and
- (v) the President or representative of the PNG Council of Women.

**23. SECRETARY OF THE COUNCIL.**

(1) The Minister shall appoint an officer of the Department responsible for commerce and industry matters to be the Secretary of the Council.

(2) The Secretary is responsible for convening meetings of the Council, recording minutes of those meetings and providing other secretarial related services.

**24. FUNCTIONS OF THE COUNCIL.**

(1) The Council shall have the following functions:

- (a) formulate broad policies and strategies to facilitate the overall development of small and medium enterprises; and
- (b) review the roles and responsibilities of Government agencies in relation to the development of small and medium enterprises; and
- (c) enhance co-operation and co-ordination, as well as guide Government agencies to ensure effective implementation of development policies and action plans for small and medium enterprises; and
- (d) encourage and strengthen the roles of the private sector in the overall development of the small and medium enterprises; and
- (e) perform any other functions conferred upon the Council under this Act.

(2) The Council may perform any other function that is incidental or consequential to any of the functions specified in Subsection (1) and do all things as may be necessary or expedient for carrying out its functions under this Act.

**25. DIRECTIONS TO THE CORPORATION.**

Subject to the Act, the Council may give directions to the Corporation and the Corporation shall give effect to those directions.

**26. MEETINGS OF THE COUNCIL.**

(1) The Council shall meet as often as the business of the Council requires, and at such times and places as the Chairperson directs, but in any event not less than twice a year.

(2) The Chairman or the Deputy Chairman, as the case may be, shall give to every member at least seven days' notice of the meeting.

(3) At a meeting of the Council -

- (a) the Chairperson and seven other members constitute a quorum; and
- (b) the Council is to cause minutes of its meetings to be recorded and kept.

(4) Subject to this Act, the procedures of the Council shall be as determined by the Council.

**27. DISCLOSURE OF INTEREST BY MEMBERS OF THE COUNCIL.**

(1) A member of the Council who has a direct or indirect interest in a matter being considered or about to be considered by the Council shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.

(2) Any disclosure under Subsection (1) shall be recorded in the minutes of the relevant meeting of the Council, and the member making the disclosure -

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- (a) shall not participate, after the disclosure, in any debate, deliberation, decision or vote of the Council in relation to the matter during the meeting at which the disclosure is made or at any other meeting of the Council; and
- (b) shall be disregarded for the purpose of determining whether a quorum is present.

**PART V. - STAFF OF THE CORPORATION.**

**28. MANAGING DIRECTOR.**

(1) There shall be a Managing Director of the Corporation whose manner of appointment, suspension and dismissal is under the *Regulatory Statutory Authorities (Appointments to Certain Offices) Act 2004*.

(2) The Managing Director is -

- (a) the Chief Executive Officer of the Corporation; and
- (b) the Head of the staff of the Corporation; and
- (c) responsible to the Board for the efficient carrying out of the functions of the Board; and
- (d) responsible to the Minister for the efficient carrying out of the functions of the Corporation under the Act.

(3) The Managing Director shall be appointed for a term of four years and, subject to the *Salaries and Conditions Monitoring Committee Act 1988*, on such terms and conditions as are determined by the Board, and is eligible for re-appointment.

(4) The Managing Director shall be terminated or suspended if he -

- (a) becomes incapable for any reason of performing or non performance of his duties; or
- (b) other than the written consent of the Board, engages in any paid employment or carries on business outside the duties of his office; or
- (c) becomes bankrupt, applies to take the benefits of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his salary for their benefit; or
- (d) is convicted of an offence that is punishable under a law by imprisonment; or
- (e) commits a serious misconduct in office; or
- (f) ceases to be ordinarily resident in the country; or
- (g) commits an offence against this Act.

(5) Any contract, arrangement or understanding under which the Managing Director would, but for this subsection, be entitled to any compensation or payment in respect of the termination of his appointment other than as provided in Subsection (4) is void *ab initio* and of no force or effect.

**29. FUNCTIONS OF THE MANAGING DIRECTOR.**

(1) The functions of the Managing Director are -

- (a) subject to Section 21(3), to manage the Corporation in accordance with the policies and directions of the Board; and
- (b) to advise the Board on any matter concerning the Corporation referred to him by the Board; and
- (c) otherwise as specified in this Act.

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- (2) The Managing Director -
- (a) shall carry out and perform the functions, powers and duties required of him under this Act and his contract of employment; and
  - (b) has such other functions, powers and duties as the Board may determine from time to time.

(3) The Managing Director may, by instrument in writing, delegate all or any of his functions, powers (other than this power of delegation) or duties to any person and shall report any delegation to the Board in writing.

(4) The Minister may, after consultation with and acting on the advice and recommendation of the National Executive Council, give to the Managing Director general or specific directions as to policy.

(5) Any direction as to policy given by the Minister under Subsection (4) shall not be inconsistent with the provisions of this Act.

### **30. STAFF OF THE CORPORATION.**

(1) The Managing Director may appoint persons to be employees of the Corporation, in accordance with procedures established and approved by the Board, for the purpose of giving effect to this Act and carrying out the functions of the Corporation.

(2) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the employees of the Corporation appointed under Subsection (1) shall be appointed on terms and conditions as the Corporation determines.

(3) The Managing Director may dismiss any employee of the Corporation in accordance with procedures established and approved by the Board.

(4) The Managing Director and the employees appointed under Subsection (1) constitute the staff of the Corporation.

(5) The Managing Director shall direct and control the employees of the Corporation.

(6) The staff of the Corporation (including the Managing Director) are officers in the National Public Services.

### **31. CONTRACT OF EMPLOYMENT.**

(1) The Managing Director and each employee of the Corporation shall be employed under a contract of employment.

(2) In the case of the Managing Director, the contract of employment shall be executed by the Minister and the Managing Director and attested by two members of the Board under the Board's common seal.

(3) In the case of any other employee, the contract of employment shall be executed by the Managing Director on behalf of the Corporation and by the employee in accordance with procedures established by the Board.

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**PART VI. - FINANCE, ETC.**

**32. APPLICATION OF THE *PUBLIC FINANCES (MANAGEMENT) ACT 1995.***

(1) Subject to Subsection (2) and without limiting any function or power of the Corporation under this Act, Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Corporation.

(2) Sections 55, 56, 57 and 58 of the *Public Finances (Management) Act 1995* do not apply to and in relation to the Corporation.

**33. INVESTMENTS AND BORROWING.**

(1) Moneys of the Corporation that are not immediately required may be invested on deposit with an Authorised Institution or in any manner that a trustee would be authorised to invest funds in his hands under the *Trustees and Executors Act 1961*, on such terms that the Board, in its discretion, may determine.

(2) Subject to Subsection (3), the Corporation may borrow money for its purposes from an Authorised Institution in any manner (including by overdraft), on such terms and within such limits as the Board, at its discretion, determines.

(3) The Corporation may not borrow money -

- (a) if and to the extent that, immediately after the money is borrowed, the total principal amount outstanding of all money borrowed by the Corporation exceeds 10% of the total assets of the Corporation; or
- (b) from a person other than an Authorised Institution; or
- (c) unless at a meeting of the Board all members of the Board vote in favour of the Corporation borrowing the money.

**34. FUND OF THE CORPORATION.**

(1) For purposes of this Act, the Corporation shall establish, administer and control a fund to be known as the "Small and Medium Enterprises Development Fund".

(2) In this section, the "loan funds" means funds as may be made available from time to time to the Government by way of loan.

(3) The Fund shall consist of -

- (a) the launching grant provided by the Government; and
- (b) all monies appropriated by the Act for the purposes of carrying out or giving effect to this Act; and
- (c) all monies received by the Corporation by way of grants and subscriptions; and
- (d) all monies received by the Corporation from investments or borrowings; and
- (e) such funds as may be allocated from time to time to the Corporation from loan funds; and
- (f) all monies received by the Corporation for goods or services provided by the Corporation; and
- (g) all monies received by the Corporation in the operation of any project, scheme or enterprise; and
- (h) all donations and contributions received by the Corporation within or outside Papua New Guinea; and
- (i) all moneys earned or arising from any property, mortgages, charges or debentures acquired by or vested in the Corporation; and



## *Small and Medium Enterprises Corporation*

- (j) all fees paid or payable under this Act; and
  - (k) any monies paid or payable to the Corporation under any law (other than this Act) in respect of any fee; and
  - (l) all fines or penalties paid or payable under this Act; and
  - (m) all other monies received by the Authority in the exercise and performance of its powers, functions and duties under this Act.
- (4) The funds of the Corporation may be expended only for the following reasons:
- (a) payment or discharge of expenses, obligations and liabilities of the Corporation; and
  - (b) remuneration of the employees of the Corporation; and
  - (c) payment of any allowances to the members of the Board, or members of any committee of the Board in accordance with the *Boards Fees and Allowances Act* (Chapter 299); and
  - (d) payment of fees and cost for professional services rendered to the Corporation; and
  - (e) payment of any charges on any amount which may be allocated to the Corporation from loan funds; and
  - (f) repaying any moneys borrowed under this Act and any interest payable; and
  - (g) the disbursement of grants, loans or other financial assistance under this Act; and
  - (h) making investments authorised by this Act; and
  - (i) such other purposes as are consistent with the functions of the Corporation after consultation with and approval by the Board.

### **35. EXPENDITURE.**

(1) The Corporation shall, not later than three months before the end of each financial year, submit to the departmental head of the Department responsible for treasury matters an operating budget including -

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

identifying any expenditure to be charged against the assets of the Corporation, as approved by the Board after consultation with, and in such form as reasonably required by, the departmental head of the Department responsible for treasury matters.

(2) For the avoidance of doubt, Section 51 of the *Public Finance (Management) Act 1995* applies to the Corporation.

### **36. LIABILITY TO TAXATION.**

For the purposes of Section 24(1) of the *Income Tax Act 1959*, the Corporation is a public authority constituted under this Act.

## **PART VII. - FINANCIAL REPORTING AND ACCOUNTING RECORDS, ETC.**

### **37. INTERPRETATION.**

In this Part, unless the contrary intention appears -

“accounting period” means the period commencing on the coming into operation of this Act and ending on the next succeeding balance date, and thereafter means the period of one year ending on a balance date;

“balance date” means the close of 31 December;

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“financial statement” in relation to the Corporation and a balance date, means -

- (a) a balance sheet for the Corporation as at the balance date; and
  - (b) an income and expenditure statement for the Corporation in relation to the accounting period ending at the balance date; and
  - (c) a statement of cash flows for the Corporation in relation to the accounting period ending at the balance date,
- together with any notes or documents giving information in relation to the balance sheet, income and expenditure statement or statement of cash flows;

“generally accepted accounting practice” has the meaning given to it by Section 172 of the *Companies Act 1997*, as if the Corporation were a reporting company within the meaning of that expression in that section and any provision referred to in that section.

### **38. PREPARATION OF FINANCIAL STATEMENTS.**

(1) The Board shall ensure that, within five months after the balance date of the Corporation, financial statements that comply with Subsection (2) are -

- (a) completed in relation to the Corporation and that balance date; and
- (b) dated and signed on behalf of the Board by the Managing Director.

(2) The financial statements of the Corporation shall comply with generally accepted accounting practice.

(3) For the purposes of this section, where, in complying with generally accepted accounting practice, the financial statements do not give a true and fair view of the matters to which they relate, the Board shall add such information and explanations to give a true and fair view of those matters.

### **39. ACCOUNTING RECORDS TO BE KEPT.**

(1) The Board shall cause accounting records to be kept that -

- (a) correctly record and explain the transactions of the Corporation; and
- (b) at anytime enables the financial position of the Corporation to be determined with reasonable accuracy; and
- (c) enables the Board to ensure that the financial statements of the Corporation comply with Section 38; and
- (d) enables the financial statements of the Corporation to be readily and properly audited.

(2) Without limiting Subsection (1), the accounting records shall contain -

- (a) entries of money received and spent each day and the matters to which they relate; and
- (b) a record of the assets and liabilities of the Corporation.

(3) The accounting records shall be kept -

- (a) in a written form; or
- (b) in a form or manner in which they are easily accessible and convertible into written form.

(4) The Corporation shall keep accounting records for the current accounting period and for the last five completed accounting periods of the Corporation.

### **40. ANNUAL REPORT.**

(1) The Board shall, by 31 March of each succeeding year, prepare and furnish to the Minister the annual report on the affairs of the Corporation during the preceding accounting period ending 31 December.

## *Small and Medium Enterprises Corporation*

(2) A copy of the annual report shall be furnished to the departmental head of the Department responsible for treasury matters.

(3) The Minister shall table the annual report at the first sitting of the Parliament after receiving the annual report.

- (4) Each annual report of the Corporation shall be in writing and shall -
- (a) include a report on the performance and management of the operations and activities of the Corporation during the accounting period; and
  - (b) include financial statements for the accounting period completed and signed in accordance with Section 38; and
  - (c) describe any change in accounting policies made during the accounting period; and
  - (d) state particulars of any interest disclosed by a member of the Board under Section 16(1) during the accounting period; and
  - (e) state, in respect of each member or former member of the Board (including the Chairperson and any former Chairperson), the total of the remuneration and the value of other benefits received by that member or former member during the accounting period; and
  - (f) state the number of employees or former employees of the Corporation, not being members of the Board, who, during the accounting period, received remuneration and any other benefits in their capacity as employees, the value of which in aggregate was or exceeded K50,000.00 per annum, and shall state the number of such employees or former employees in brackets of K10,000.00; and
  - (g) state the total amount of any donations made or commissions paid by the Corporation during the accounting period; and
  - (h) state the names of the persons holding office as members of the Board at the end of the accounting period and the name of any person who ceased to hold office as member of the Board during the accounting period; and
  - (i) be signed by the Chairperson of the Board and the Managing Director of the Corporation.

### **41. AVAILABILITY OF ANNUAL REPORT.**

(1) Any annual report of the Corporation that is furnished to the Minister under Section 40 is a public document.

(2) At the request of any person at any time, the Corporation shall provide the person with a copy of its most recent annual report on payment by that person of such fee (if any) as is determined by the Corporation.

(3) The fee under Subsection (2) may not exceed K10,000.00 or such other higher amount as may be prescribed by a Regulation made under this Act.

### **42. AUDIT.**

(1) The Corporation shall appoint, in respect of each accounting period of the Corporation and before, or as soon as practicable after, the commencement of the relevant accounting period, a member of a reputable accounting firm who is a Registered Company Auditor under the *Accountants Act 1996* and who is ordinarily resident in the country, to be the auditor of the Authority and to audit the financial statements of the Corporation for the relevant accounting period.

- (2) The auditor appointed under Subsection (1) shall -
- (a) be appointed for a term of one year; and

## *Small and Medium Enterprises Corporation*

- (b) hold office on such terms and conditions as are determined by the Board; and
- (c) is eligible for re-appointment.

(3) Sections 190(2), 192, 193, 198, 199, 200 and 202 of the *Companies Act 1997* shall apply in relation to an auditor appointed under Subsection (2) as if -

- (a) references to a company or a reporting company were references to the Corporation, and references to the board of a company were references to the Board; and
- (b) a reference to a director of a company were a reference to a member of the Board; and
- (c) a reference to the shareholders of a company were a reference to the Minister; and
- (d) the financial statements of the Corporation were financial statements to which Section 200 of the *Companies Act 1997* applies.

(4) The Corporation shall appoint a qualified person to be the Corporation's internal auditor, who shall provide a written audit report as requested by the Board, but not less often than quarterly, and a copy of each audit report shall be presented to the Minister and to the Departmental Head of the department responsible for treasury matters.

### **PART VIII. - MISCELLANEOUS.**

#### **43. PROOF OF CERTAIN MATTERS.**

In any proceedings by or against the Corporation, proof is not required, unless evidence is given to the contrary, in which case, the following are required:

- (a) the constitution of the Corporation; or
- (b) a resolution of the Board; or
- (c) the appointment of a member of the Board; or
- (d) the appointment of the Managing Director; or
- (e) the presence of a quorum at a meeting of the Board at which a determination is made or an act is done.

#### **44. SERVICE OF PROCESS.**

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

#### **45. AUTHENTICATION OF DOCUMENTS.**

Any document requiring authentication by the Corporation is sufficiently authenticated with the common seal of the Corporation affixed in accordance with this Act.

#### **46. APPOINTMENT OF ATTORNEYS.**

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

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

#### **47. INCORPORATION OF COMPANIES.**

(1) Subject to Subsection (2), the Corporation may establish companies to carry out and have charge, conduct and management on behalf of the Corporation of any project, scheme or enterprise.

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- (2) The Corporation shall -
  - (a) get approval from the responsible Minister and the Minister responsible for financial matters before incorporating a company; and
  - (b) ensure that the incorporation of a company is necessary or convenient for purposes of giving effect to the Act.

### **48. RECOVERY OF MONEY DUE.**

Any money due to the Corporation including all funds of the Corporation under Section 34(3) may be recovered by the Corporation as a debt.

### **49. PROTECTION FROM PERSONAL LIABILITY.**

A member of the Corporation, a member of a Committee of the Board, an officer, employee, servant or agent of the Corporation shall not be personally liable for any act or default of himself or the Corporation done or omitted to be done in good faith in the course of the activities or operations of the Corporation or for the purposes of the Corporation.

### **50. GENERAL PENALTY.**

(1) A person who acts in contravention to this Act is guilty of an offence against this Act.

(2) A person that commits an offence against this Act for which no penalty is provided in this Act is liable to a penalty of a fine not exceeding K25,000.00 or to imprisonment for a term not exceeding two years, or to both, and where the offence is a continuing offence, is further liable to a default penalty of a fine not exceeding K2,500.00 for each day the offence continues.

### **51. INFORMATION.**

(1) Where, in the opinion of the Board -

- (a) any information, book or record in the possession or custody or under the control of a person is or are relevant to the exercise or performance of the powers or functions of the Corporation or to the achievement of the purposes of this Act; and
- (b) it is desirable that the information be furnished to the Corporation or that the book or record be produced for inspection by the Corporation,

the Corporation may issue to the person a written notice to that effect specifying the relevant information, book or record and specifying the place and time at which such information, books or records are to be furnished or produced to the Corporation.

(2) A person who receives a notice under Subsection (1) shall furnish or produce for inspection, at the place and at the time specified in the notice, the information, book or records specified in the notice and copies of or extracts from any information, books and records so furnished or produced may be made and retained by the Corporation.

(3) The Corporation or its employees may take copies of and extracts from any information, book or record furnished or produced under Subsection (2).

(4) Subsection (2) does not affect the operation of any law by or under which any information, book or record is to be kept confidential.

(5) Subject to Subsection (6), a person who, without reasonable excuse (proof of which is on him), refuses or fails after receiving a notice under Subsection (1), to furnish any information or produce for inspection any book or record, or who furnishes any information that is false or misleading in a material particular, is guilty of an offence.

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Penalty: A fine not exceeding K10,000.00.

Default penalty: A fine not exceeding K1,000.00.

(6) It is a defence to a charge for an offence against Subsection (5) if the person charged proves that the information, book or record was not relevant to the exercise or performance of the powers or functions of the Corporation, or was not in the possession or custody or under the control of the person at the time of receipt of the notice under Subsection (1).

### **52. FALSE STATEMENTS.**

A person who, in a statement made or information furnished for the purposes of this Act, makes, without reasonable excuse (proof of which is on him), a statement or gives information that is false or misleading in a material particular, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

### **53. PROSECUTIONS.**

(1) A prosecution under this Act shall be made on indictment in the National Court.

(2) In any action brought under this Act by or against the Corporation, the court may award costs against any party or claimant other than the Corporation, which costs may be recovered by the Corporation as a debt due to the Corporation.

(3) Any fine or penalty or any default fine or penalty to be paid by a person as a result of an action brought by the Corporation shall be paid to the Corporation and, in addition to any other remedy, may be recovered by the Corporation as a debt due to the Corporation.

### **54. CONFIDENTIALITY.**

(1) The Corporation shall take all reasonable steps to protect from unauthorised use or disclosure, information given to it in confidence or in connection with the performance of its functions or the exercise of its powers.

(2) For the purposes of Subsection (1), the disclosure of information -

(a) as required and permitted by any law or court of competent jurisdiction; or

(b) by a person for the purposes of performing that person's functions as an employee of the Corporation or as a member of the Board,

is to be taken as authorised use and disclosure of the information.

### **55. REPEAL.**

The *Small Business Development Corporation Act 1990* is hereby repealed.

### **56. TRANSFER OF ASSETS.**

(1) Any -

(a) assets (other than land held by the state) which, immediately before the coming into operation of this Act were occupied, held, owned or used by the former Corporation; and

(b) all rights, obligations and liabilities of the former Corporation immediately before the coming into operation,

are, on that coming into operation, transferred to and become the assets, rights, obligations and liabilities of the Corporation.

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(2) Any assets that, immediately before the coming into operation of this Act, were occupied, held, owned or used by the former Corporation and which in the Board's opinion are required by the Corporation for the purposes of this Act may be the subject of a written requisition directed to the Minister, and a requisition shall be made no later than 12 months after the coming into operation of this Act.

(3) On receipt of a requisition under Subsection (2), the Minister shall give possession of the requisitioned asset to the Corporation, which shall then be the property of the Corporation.

(4) Where an asset is transferred to the Corporation under Subsection (2) or (3), Subsections (5) and (6) shall apply to that asset as the circumstances require.

(5) Any register maintained under any Act on which any of the assets transferred under Subsection (1) are registered in the name of the former Corporation or the State, is taken to be amended as from the coming into operation of this Act by substituting the name of the Corporation for the former Corporation or the State, as the case requires.

(6) Without limiting Section 36, the transfer to the Corporation of the assets, rights, obligations and liabilities of the former Corporation under Subsection (1) is exempt from any stamp duty, fee, tax, charge or other duty payable under any Act.

(7) Where the assets transferred to the Corporation under this section is an interest over government land being a right previously granted to the former Corporation to occupy the land, the Corporation shall, on the coming into operation of this Act, be deemed to have been granted the right of occupancy of the land in accordance with the provisions of the *Land Act 1996*.

### **57. SAVING OF CONTRACTS.**

(1) All contracts and agreements (other than contracts of employment) entered into by or on behalf of the former Corporation shall -

- (a) be deemed to be entered into by or on behalf of the Corporation; and
- (b) continue to be binding on, and in full force and effect against or in favour of the Corporation; and
- (c) continue to benefit the Corporation.

(2) The operation of Subsection (1) is not to be regarded -

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights, obligations or liabilities; or
- (c) as giving rise to any remedy by a party to an instrument or agreement, or as causing or permitting the termination of any instrument or agreement; or
- (d) as releasing any surety or other obligation wholly or in part.

### **58. APPLICATION OF FACTS.**

Without limiting Section 59, where an Act or other law (other than this Act) or any other document or instrument wherever made or executed, contains a reference, express or implied -

- (a) to the former Corporation, that reference, on the coming into operation of this Act, except where the context otherwise requires, shall be read and construed and have effect as a reference to the Corporation; and
- (b) to the Managing Director of the former Corporation, that reference, on the coming into operation of this Act, except where the context otherwise requires, shall be read and construed and have effect as a reference to the Managing Director of the Corporation.

*Small and Medium Enterprises Corporation*

**59. NO EFFECT ON PREVIOUS ACTS AND DECISIONS.**

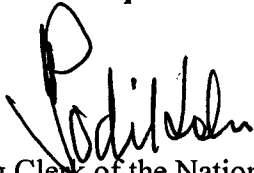
Nothing in this Act affects the validity of any act or decision done or made by the former Corporation (or any officer of the former Corporation), or the Managing Director of the former Corporation, before the coming into operation of this Act, and every such act and decision shall be taken to be valid and effectual and to have continuing effect despite anything in this Act.

**60. REGULATIONS.**


(1) The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are permitted or required to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act and in particular for prescribing -

- (a) fees as determined by the Board; and
- (b) allowances payable to any member and alternate member of the Board; and
- (c) the responsibilities, conduct and control of officers and servants of the Corporation; and
- (d) remuneration, allowances and conditions of service of officers and servants of the Corporation; and
- (e) payment of pensions, allowances or gratuities to the officers and servants of the Corporation upon retirement or otherwise ceasing to hold office as such officers and servants; and
- (f) the manner in which and the terms and conditions on which loans to officers and servants of the Corporation may be granted under the Act; and
- (g) the discipline of officers and servants of the Corporation; and
- (h) fees and for prescribing penalties of fines not exceeding K10,000.00 and default penalties of fines not exceeding K1,000.00 for infringements of the regulations.

I hereby certify that the above is a fair print of the *Small and Medium Enterprises Corporation Act 2014* which has been made by the National Parliament.

  
Acting Clerk of the National Parliament.  
**21 OCT 2014**

I hereby certify that the *Small and Medium Enterprises Corporation Act 2014* was made by the National Parliament on 2 September 2014, by an absolute majority in accordance with the *Constitution*.

  
Speaker of the National Parliament.  
**21 OCT 2014**