No. 17 of 2017.

***Public Money Management Regularisation Act* 2017.**

Certified on : 14 FEB 2018

No. 17 of 2017.

Public Money Management Regularisation Act **2017**.

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No. 17 of 2017.

AN ACT

entitled

***Public Money Management Regularisation Act* 2017,**

Being an Act to regularise the handling and management of public money received by public and statutory bodies and for related purposes,

MADE by the National Parliament.

PART I. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

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

(*a*) the right to liberty conferred by Section 42; and
(*b*) the right to freedom from arbitrary search and entry conferred by Section 44; and
(*c*) the right to freedom of expression and publication conferred by Section 46; and
(*d*) the right to peacefully assemble and associate and to form or belong to, or not to belong to, political parties, industrial organisations or other associations conferred by Section 47; and
(*e*) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48; and
(*f*) the right to reasonable privacy conferred by Section 49; and
(*g*) the right of reasonable access to official documents conferred by Section 51; and
(*h*) the right of freedom of movement conferred by Section 52,

is a law that is made under Section 38 of the ***Constitution***, taking account of the National Goals and Directive Principles and the Basic Social Obligations, for the purpose of giving effect to the public interest in public order and public welfare.

(2) For the purposes of Section 53(2) of the ***Constitution***, this Act is expressed to be made in the national interest.

(3) 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.

(1) In this Act, unless the contrary intention appears -

"Constitutional institutions" means the institutions established by the ***Constitution***;
"Departmental Head" means the Departmental Head responsible for financial matters;

"ILPOC" means the Integrated Local Purchase Order or Claim;

"public body" means an agency which is part of the State Services established under Part VII of the ***Constitution*** and excludes a Provincial Government or Local-level Government established under the ***Organic Law on Provincial Governments and Local-level Governments***;

"public money" includes all money raised, refunded, received, held or controlled by a public body, statutory body or a person acting on behalf of the State, including all money received as a result of -

(*a*) fees, levies, royalties or any other charges of any type, other than taxes; or

(*b*) bonds, debentures, shares, securities, term-deposits, dividends or any other investments, including the return on those investments; or

(*c*) the sale or lease of public property; or

(*d*) donations or gifts,

but excludes money appropriated to a public or statutory body by or under the National Budget;

"statutory body" means a body, authority or instrumentality (incorporated or unincorporated) established under an Act of the Parliament or howsoever otherwise for governmental or official purposes, including a subsidiary statutory body that is not a public body, but excludes a body, authority or instrumentality (incorporated or unincorporated) established by a Provincial Government or Local-level Government or their subsidiary statutory bodies that are not public bodies;

"this Act" includes the regulations.

(2) In this Act, "Trust Fund" shall not include Trust Account.

3. APPLICATION OF ACT.

(1) This Act binds -

(*a*) the State; and

(*b*) all public and statutory bodies.

(2) This Act shall not apply to -

(*a*) the Bougainville Government established under Part XIV of the ***Constitution*** or any public or statutory body created or established by the Bougainville Government or any public or statutory body operating exclusively within the Autonomous Region of Bougainville; and

(*b*) any statutory body which is established or serves primarily religious purposes; and

(*c*) the Kumul Consolidated Holdings established under the ***Kumul Consolidated Holdings Authorisation Act*** **2002**; and

(*d*) the Kumul Petroleum Company established under the ***Kumul Petroleum Holdings Limited Authorisation Act*** **2015**; and

(*e*) the Kumul Minerals Company established under the ***Kumul Minerals Holdings Limited Authorisation Act*** **2015**.

PART II. - REGULARISATION OF PUBLIC MONEY.

4. INTEGRITY OF CONSTITUTIONAL INSTITUTIONS.

(1) Nothing in this Act shall be interpreted so as to restrict or in any way diminish the functional mandates and integrity of constitutional institutions but shall be interpreted so as to limit the operation of the Act to public financial management of public money.

(2) This Act binds constitutional institutions and constitutional institutions shall be deemed to be statutory bodies for the purposes of this Act.

5. INTERPRETATION OF INCONSISTENT LEGISLATION.

(1) This Act shall be interpreted as being subject only to the terms of the ***Public Finances (Management) Act*** **1995**.

(2) An Act, a regulation or other subordinate legislation that is inconsistent with the purposes of this Act shall be repealed accordingly.

(3) This Act shall be interpreted to override and expressly or impliedly repeal, to the extent of inconsistency, any direction, appointment, notice or similar, including any agreement or undertaking, that is wholly or partly inconsistent with this Act, other than the ***Public Finances (Management) Act*** **1995**.

(4) This Act expressly renders wholly void and of no effect any agreement or undertaking in respect of the sharing of public money raised as revenue by a public or statutory body other than by an Appropriation Act, as and from the date of the agreement or undertaking, that is wholly or partly inconsistent with this Act, other than the ***Public Finances (Management) Act*** **1995**.

(5) No compensation, damages or any other relief, including injunctive or declaratory relief, may be awarded by any court or tribunal in respect of any agreement or undertaking rendered void by this section.

6. PAYMENT OF PUBLIC MONEY TO CONSOLIDATED REVENUE FUND.

(1) Subject to this Act, from the date of the commencement of this Act, all public money -

(*a*) held by or on behalf of any person or a public or statutory body; or

(*b*) received or in the custody, care or control of any person or a public or statutory body, whether or not it has been banked,

shall, at the close of the business day on which the public money was first held or received, be transferred or deposited, without deduction of any type, to the revenue bank accounts specified for that person or public or statutory body by the Departmental Head.

(2) From the date of commencement of this Act, a person or public or statutory body shall not hold or receive into their custody, care or control, either directly or indirectly, any public money, other than in accordance with this Act.

(3) A specification of bank accounts by the Departmental Head pursuant to Subsection (1) shall be by written notice.

(4) On receipt of public money into a specified bank account pursuant to Subsection (1), the Departmental Head shall cause to be transferred back to a public or statutory body an amount equal to ten percent of the public money transferred by the public or statutory body to their operating bank account.

7. BANK ACCOUNTS OF PUBLIC AND STATUTORY BODIES.

(1) Every public and statutory body shall maintain, in addition to any trust accounts, a single operating bank account.

(2) The operating bank account of a public or statutory body shall contain only public money -
- (*a*) appropriated by the National Budget; and
- (*b*) transferred to a public or statutory body pursuant to Section 8.

(3) A trust account of a public or statutory body shall contain only -
- (*a*) the money appropriated to a public or statutory body by or under the National Budget and which the National Budget specifically authorises to be transferred to a trust acount; and
- (*b*) the donor funds authorised by the trust instrument of that trust account.

(4) Subject to this Act, any public money -
- (*a*) in an operating account or trust account other than the public money authorised by this Act shall be transferred to the Consolidated Revenue Fund by the Departmental Head; or
- (*b*) in a trust account, other than the public money authorised by the ***Public Finances (Management) Act* 1995** and the trust instrument of the trust account, shall be transferred to the Consolidated Revenue Fund by the Departmental Head.

(5) The Departmental Head shall open and operate such revenue bank accounts as are necessary to provide for the receipt of all public funds collected by any person, public or statutory body.

(6) A person or public or statutory body that receives public money shall bank that money, without deduction or withholding, into the relevant revenue bank account operated by the Departmental Head.

(7) The Departmental Head has the power, by virtue of this Act, to operate and execute transactions in his own name on all bank accounts of all public and statutory bodies, including trust and operating accounts, irrespective of any provisions in any other law relating to the signatories of bank accounts, to -
- (*a*) access the transactional details of any bank account held by or on behalf of a public or statutory body; and
- (*b*) transfer or cause to be transferred to the Consolidated Revenue Fund or a revenue account, public money that, pursuant to this Act or the ***Public Finances (Management) Act* 1995**, is required to be so transferred; and
- (*c*) effect any transaction permitted or required by this Act.

(8) Subject to this Act, at the date of commencement of this Act, if a person or public or statutory body holds public money in a bank account other than in accordance with this section so that public money is mixed with money other than public money, the Departmental Head has the power by virtue of this Act to transfer, without deduction of any type, to the revenue bank accounts of that person or public or statutory body, all such money including the public money held in that bank account.

(9) Subject to this Act, the Departmental Head, on receipt of information that satisfies him that money other than public money has been transferred pursuant to Subsection (8), shall transfer -

(*a*) money appropriated by the National Budget to the operating bank account, if it is not a drawing account of a public or statutory body; or

(*b*) money appropriated by the National Budget to a trust account of a public or statutory body, provided that the National Budget specifically authorised that money to be transferred to a trust account; or

(*c*) in respect of money other than public money, to the public or statutory body from which it was transferred pursuant to Subsection (8).

8. STRATEGIC BUDGET COMMITTEE.

(1) The Departmental Head -

(*a*) of the Department responsible for finance matters; and

(*b*) of the Department responsible for treasury matters,

and such other Departmental Heads as the Departmental Heads in Paragraphs (*a*) and (*b*) may appoint from time to time to consider sectoral specific matters, may form the Strategic Budget Committee, of which the Departmental Head of the department responsible for treasury matters shall be the chairman.

(2) The Strategic Budget Committee may determine that, to meet the reasonable operating budget requirements of a public or statutory body, that an amount other than the amount specified in Section 9(5) be remitted to a public or statutory body.

(3) A determination pursuant to Subsection (2) shall be by notice in writing by the chairman and shall have no force or effect until ratified by the Treasurer.

(4) A public or statutory body to which Subsection (1) applies, may make a submission, approved by resolution of the managing committee, board or other controlling entity in the case of a statutory body, in writing to the Strategic Budget Committee in respect of its operating budget requirements that shall -

(*a*) specify its full complement of staff, including consultants for any and all projects of the public or statutory body, and the total of all salary, benefits, fees and any other emoluments payable to each such person on an annual basis; and

(*b*) specify all recurrent outgoings and costs of the public or statutory body; and

(*c*) specify the activities to be undertaken by the public or statutory body in that financial year, including an itemised costing of those activities,

and such other matters as may be required by Treasury Instructions issued pursuant to this Act.

(5) A determination under this section shall be expressed by the Strategic Budget Committee as a percentage of the public money received into the revenue bank account of that public or statutory body, as the case may be.

(6) Subject to this section, the Departmental Head shall implement a determination under this section by transferring to a public or statutory body an amount equal to the percentage determined by the Strategic Budget Committee under this Act.

(7) Transfers pursuant to Subsection (6) shall be made to the operating account of a public or statutory body, unless that operating account is a drawing account, in which case the funds shall be transferred to a trust account specifically opened and maintained solely for the purpose of the receipt of those funds.

(8) The Treasurer shall cause to be laid before Parliament at the next sitting of Parliament the details of all determinations ratified by him pursuant to this Act.

(9) The Departmental Head responsible for treasury matters may issue Treasury Instructions, by notice published in the National Gazette, not inconsistent with this Act or the ***Public Finances (Management) Act* 1995**, as to any matter relating to the conduct and control of the operations of the Strategic Budget Committee.

(10) All persons shall comply with the terms, conditions, requirements and instructions of Treasury Instructions issued under this section.

9. JUDICAL REVIEW OF STRATEGIC BUDGET COMMITTEE.

(1) A determination pursuant to Section 8 shall not be the subject of any judicial or administrative review by a public or statutory body, including by way of injunctive relief or prerogative writ.

(2) For the purpose of Subsection (1), a public or statutory body shall not engage legal representation, commence any action or other proceeding in any court or tribunal or procure or contract for legal representation other than in compliance with the ***Attorney-General Act* 1989**.

(3) For the purposes of Subsection (2), prior to the Attorney-General exercising his powers pursuant to Section 7 of the ***Attorney-General Act* 1989** -

(*a*) the State Solicitor shall certify to the Attorney-General whether the lawyers to be appointed are, in the opinion of the State Solicitor, experienced and with sufficient professional competence in the area of law to represent a public or statutory body; and

(*b*) the Attorney-General shall satisfy himself that all procurement laws in Papua New Guinea have been complied with to the extent necessary for him to exercise his powers.

(4) Legal representatives of public and statutory bodies shall not receive or charge for any fees or disbursements other than taxed party-party or solicitor-client costs on the scale of fees of the appropriate Court.

(5) If any public or statutory body, or any other person, obtains injunctive or declaratory relief in respect of any provision of this Act, including a determination pursuant to Section 8, the Court or administrative body making the order shall also order that -

(*a*) the public or statutory body, or any other person seeking the order shall within, one working day, pay into court the amount that the State demands to be paid to secure payment of the State's legal costs, or the order in respect of the injunctive or declaratory relief shall be immediately vacated by reason of the non-payment within the required time; and

(*b*) the public or statutory body, or any other person seeking the order shall pay into Court all public funds in their possession or control at the time of the order and all public funds that subsequently come into their possession within one working day of receiving those funds; and

(*c*) that the substantive hearing of the matter, application or injunction be set for full hearing within ten working days of the granting of the injunctive or declaratory relief.

10. LEGAL REPRESENTATION OF PUBLIC AND STATUTORY BODIES.

(1) For the purposes of this Act, a public or statutory body shall not engage legal representation, commence any action or other proceeding in any court or tribunal or procure or contract for legal representation for any purpose other than in compliance with the ***Attorney-General Act* 1989**.

(2) Prior to the Attorney-General exercising his powers pursuant to Section 7 of the ***Attorney-General Act* 1989** -

(*a*) the State Solicitor shall certify to the Attorney-General whether the lawyers to be appointed are, in the opinion of the State Solicitor, experienced and with sufficient professional competence in the area of law to represent a public or statutory body; and

(*b*) the Attorney-General shall satisfy himself that all procurement laws in Papua New Guinea have been complied with to the extent necessary for him to exercise his powers.

(3) Legal representatives of public and statutory bodies shall not receive or charge for any fees or disbursements other than taxed party-party or solicitor-client costs on the scale of fees of the appropriate Court.

(4) For the purposes of this section and Section 11 -

"public body" means an agency which is part of the State Services established under Part VII of the ***Constitution*** and includes a Provincial Government or Local-level Government established under the ***Organic Law on Provincial Governments and Local-level Government***; and

"statutory body" means a body, authority or instrumentality (incorporated or unincorporated) established under an Act of the Parliament or howsoever otherwise for governmental or official purposes, including a subsidiary statutory body that is not a public body, and includes a body, authority or instrumentality (incorporated or unincorporated) established by a Provincial Government or Local-level Government or their subsidiary statutory bodies that are not public bodies.

11. CLAIM AGAINST THE STATE AND STATUTORY BODIES NOT ENFORCEABLE IN CERTAIN CIRCUMSTANCES.

(1) A claim for payment, compensation, restitution, damages or any other form of relief, including injunctive or declaratory relief, against the State or a statutory body based on equity or equitable principles in respect of the value of works, goods or services rendered to the State or a statutory body shall not be enforceable, through the Courts or otherwise, unless the seller of the property or stores or the supplier of the works, goods or services produces -

(*a*) a properly authorised ILPOC; or

(*b*) an Authority to Pre-commit Expenditure,

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

(2) A claim for payment, compensation, restitution, damages or any other form of relief, including injunctive or declaratory relief, against the State or a statutory body based on the undertaking or promise of any person, whether or not that person had the actual, implied or ostensible authority of the State or statutory body to give or make that undertaking or promise, shall not be enforceable, through the courts or otherwise, unless the person making the claim produces -

(*a*) a properly authorised ILPOC; or

(*b*) an Authority to Pre-commit Expenditure,

relating to the undertaking or promise, the subject of the claim, to the full amount of the claim.

(3) The Courts shall, on application by the State, stay a claim specified in Subsections (1) and (2), if the person making the claim cannot produce, on demand by the State -

(*a*) a properly authorised ILPOC; or

(*b*) an Authority to Pre-commit Expenditure,

relating to the subject of the claim, to the full amount of the claim.

PART III. - MISCELLANEOUS.

12. OFFENCES.

(1) All offences under this Act are offences of strict liability.

(2) A person who, in whole or part, omits or fails to comply with a duty, obligation or requirement of this Act is guilty of an offence.

(3) In sentencing a person after conviction of an offence under this Act, the rank, title or designation of the person within the public or statutory body at the time of the commission of the offence shall be considered by the sentencing court so that the higher the rank, title or designation of the person, the more serious the offence when imposing penalty.

(4) The penalties for conviction for an offence under this Act are -

(*a*) in the case of an offence by a person, imprisonment for a term not exceeding 15 years and a fine not exceeding K2,000,000.00; and

(*b*) in the case of an offence by a body corporate, a fine not exceeding K50,000,000.00.

13. TRANSITIONAL IMPLEMENTATION.

(1) After the date of the commencement of this Act, the Departmental Head shall transfer all moneys in all bank accounts held by or on behalf of public and statutory bodies to bank accounts specified for that public or statutory body by the Departmental Head.

(2) Subject to this section, the Departmental Head shall -

(*a*) return to a trust account, without deduction, the money that was authorised by the trust instrument to be contained in the trust account, including amounts appropriated by the National Budget and authorised by that National Budget to be paid into a trust account, provided that no public money shall be returned to a trust account; and

(*b*) return to an operating account amounts appropriated by the National Budget and the amount specified in Sections 8(5) or 10(1); and

(*c*) pay all other funds to the Consolidated Revenue Fund.

(3) The Departmental Head shall make no payments pursuant to Subsection (2) unless -

(*a*) the public or statutory body has an operating account or trust account, as the case may be, that is in full compliance with all of the requirements of the ***Public Finances (Management) Act* 1995**; and

(*b*) the Departmental Head is in receipt of information produced by the public or statutory body that satisfies him that the payments are due pursuant to Subsection (2).

(4) After the Departmental Head has acted pursuant to Subsection (1), he may, from time to time as he thinks fit, repeat the actions authorised by that subsection, to ensure that operating and trust accounts are being operated in accordance with the provisions of this Act and the ***Public Finances (Management) Act* 1995**.

14. TERMINATION OF OPERATION.

(1) From 1 January 2020, Sections 8(4) and 10 of this Act shall cease to operate and as and from that date all public money shall be paid to the nominated bank accounts of the Consolidated Revenue fund and no money shall be remitted or returned to any public or statutory body.

(2) For the avoidance of doubt, as and from 1 January 2020, public and statutory bodies shall receive public money solely by appropriations made by or under the National Budget.

I hereby certify that the above is a fair print of the ***Public Money Management Regularisation Act* 2017** which has been made by the National Parliament.

Acting Clerk of the National Parliament.
14 FEB 2018

I hereby certify that the ***Public Money Management Regularisation Act* 2017** was made by the National Parliament on 5 December 2017 by an absolute majority in accordance with the ***Constitution***.

Speaker of the National Parliament.
14 FEB 2018