
Kumul Petroleum Holdings Limited Authorisation Act 2015

No. 6 of 2015.

AN ACT

entitled

Kumul Petroleum Holdings Limited Authorisation Act 2015,

Being an Act —

- (a) to recognise the establishment of Kumul Petroleum Holdings Limited as a commercial enterprise that principally participates in the conduct of oil and gas exploration, development, production, processing and marketing activities, including all related upstream, midstream and downstream activities; and
- (b) to recognise that National Petroleum Company of Papua New Guinea (Kroton) Limited, which participates in the LNG Project, is a subsidiary of Kumul Petroleum Holdings Limited; and
- (c) to provide for the transfer of all of the issued shares in Kumul Petroleum Holdings from the Independent Public Business Corporation of Papua New Guinea to the Kumul Petroleum Trustee; and
- (d) to provide that Kumul Petroleum Holdings Limited and its subsidiaries will not be the State or instrumentalities of the State and that their assets will not be public assets; and
- (e) to acknowledge that Kumul Petroleum Holdings Limited and the Kumul Petroleum Trustee will enter into the Kumul Petroleum Trust Deed,

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 Minister.

PART I. — PRELIMINARY.

1. Compliance with Constitutional requirements.

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

- (a) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (b) the right to freedom of conscience, thought and religion conferred by Section 45; and
- (c) the right to freedom of expression conferred by Section 46; and
- (d) the right to freedom of assembly and association conferred by Section 47; and
- (e) the right to freedom of employment conferred by Section 48; and
- (f) the right to privacy conferred by Section 49; and
- (g) the right to freedom of information conferred by Section 51,

of the *Constitution* is a law that is made to comply with Section 38 of the *Constitution*, taking account of the National Goals and Directive Principles and Basic Social Obligations, in particular the National Goals and Directive Principles, namely —

- (h) national sovereignty and self-reliance; and
- (i) national resources and environment,

for the purpose of giving effect to the public interest in public order and public welfare, to the extent that the law is reasonably justifiable in a democratic society having proper respect or regard for the rights and dignity of mankind.

(2) Insofar as this Act involves a compulsory taking of possession of property or a compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the *Constitution* —

- (a) the purpose and reason for each such taking and acquisition are declared and described to facilitate the efficient and economical development and operation of Kumul Petroleum Holdings and each other Kumul Petroleum Company, and of the assets acquired by them so that Kumul Petroleum Holdings and each other Kumul Petroleum Company might thereby contribute to the advancement of the social and economic welfare of the people of Papua New Guinea; and
- (b) such purpose and reason is hereby also declared to be a reason that is reasonably justified in a democratic society that has proper regard for the rights and dignity of mankind; and
- (c) this Act is hereby expressed to be in the national interest; and
- (d) the undertaking of the obligations of the State, or Kumul Petroleum Holdings and each other Kumul Petroleum Company, as the case may be, in relation to each such taking or acquisition under this Act, the *Oil and Gas Act 1998*, the conditions of any lease, licence or other tenement granted or issued under the *Oil and Gas Act 1998*, the terms

of any petroleum development contract or gas agreement or other agreement made in connection with such grant or issue or the acquisition by the State of participating interest in a petroleum project and the terms of any such taking or acquisition as provided for in this Act, shall constitute compensation made in connection with that taking or acquisition,

for the purposes of Section 53 of the *Constitution* and for the purposes of any other relevant law.

(3) Insofar as this Act provides for a compulsory taking of possession of property or a compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the *Constitution* of any person who is not a citizen, this Act is made pursuant to Subsection 53(7) of the *Constitution*.

(4) This Act, to the extent that it creates or otherwise gives rise to rights, privileges, obligations and duties that are not the same as between citizens, is intended to be a law for the special benefit, welfare, protection and advancement of members of underprivileged and less advanced groups and residents of less advanced areas for the purposes of Section 55 of the *Constitution*.

(5) 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 —
- "Accounting Period" means a calendar year commencing on 1 January;
- "Annual Plan" means a plan for activities of Kumul Petroleum Holdings and its subsidiaries for the period starting 1 January and ending 31 December that includes —
- (a) a financial plan, including proposed borrowings and payment of dividends; and
 - (b) an annual capital and expenditure budget; and
 - (c) proposals for acquisition of assets; and
 - (d) a forecast of the asset, liability and cash flow position of Kumul Petroleum Holdings and its subsidiaries as at the end of the Annual Plan period; and
 - (e) identification of assets for joint development between the State, Kumul Petroleum Holdings and its subsidiaries and third party investors; and

- (f) proposals for amounts to be preserved for future capital expenditure on a five year rolling forecast basis; and
- (g) identification of assets for rehabilitation and restructure; and
- (h) proposals for sale of assets; and
- (i) proposals regarding financing for the purposes of this Act; and
- (j) proposals for amounts to be set aside on a contingency basis for specific projects; and
- (k) proposed timetables for the matters referred to in Paragraphs (a) to (i);

"assets" means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) and includes shares and capital (uncalled or otherwise) in any corporation, securities, choses in action and documents of any kind;

"Board" means the Board of Directors of a Kumul Petroleum Company;

"fit and proper person" means a person determined as such in accordance with this Act after taking into account the following considerations:

- (a) that person's probity; and
- (b) that person's competence and soundness of judgment for fulfilling the responsibilities of the position; and
- (c) diligence with which that person is fulfilling or likely to fulfil those responsibilities; and
- (d) whether the interests of Kumul Petroleum Holdings or its subsidiaries concerned are, or are likely to be, in any way threatened by that person being a member of the particular Board; and
- (e) that person's conduct and activities in business or financial matters, including whether that person has —
 - (i) engaged in or been associated with any financial loss due to dishonesty, incompetence or malpractice; or
 - (ii) been engaged in any business practices which could be considered to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on that person's method of conducting business or financial matters;

"General Business Trust" has the meaning set out in the IPBC Act;

"IPBC" means Independent Public Business Corporation of Papua New

- Guinea, established under the IPBC Act, and which, upon the *Kumul Consolidated Holdings Limited Authorisation Act 2015* coming into operation will be renamed Kumul Consolidated Holdings Limited;
- "IPBC Act" means *Independent Public Business Corporation of Papua New Guinea Act 2002*;
- "Kumul Petroleum Company" means any one of Kumul Petroleum Holdings and its subsidiaries, including National Petroleum (Kroton), and "Kumul Petroleum Companies" means any one or more of them;
- "Kumul Petroleum Company Shares" means all of the issued share capital and all rights in respect of unissued shares of a Kumul Petroleum Company;
- "Kumul Petroleum Holdings" means Kumul Petroleum Holdings Limited, Company No. 1-100145, a company established and incorporated under the *Companies Act 1997*, which, prior to the date this Act came into effect, was named NPCP Holdings Limited;
- "Kumul Petroleum Holdings Shares" means all of the issued share capital and all rights in respect of unissued shares of Kumul Petroleum Holdings;
- "Kumul Petroleum Share Trust" means the trust established under the Kumul Petroleum Trust Deed;
- "Kumul Petroleum Trust Deed" means the Trust Deed so named entered into or to be entered into by the Kumul Petroleum Trustee as trustee, the State as beneficiary and Kumul Petroleum Holdings;
- "Kumul Petroleum Trustee" means the person holding, from time to time, the office of Prime Minister established by Section 142 (*The Prime Minister*) of the *Constitution* and who, as trustee under and subject to the terms of the Kumul Petroleum Trust Deed and the terms of this Act, holds the Kumul Petroleum Holdings Shares for and on behalf of the State;
- "liabilities" includes any and all debts, obligations and liabilities of any nature whatsoever and whether present or future, actual or contingent or liquidated or unliquidated;
- "LNG Project" has the meaning set out in the *Liquefied Natural Gas Project (State Participation) Act 2008*;
- "Minister" means the Minister designated by the Prime Minister and published in the National Gazette with respect to the allocation of Ministerial duties and responsibilities of Ministers under Section 148 of the *Constitution*, to be the Minister who shall be responsible for the administration of this Act;
- "National Executive Council" means the National Executive Council

- established under Section 149 of the *Constitution*;
- "National Petroleum (Kroton)" means National Petroleum Company of Papua New Guinea (Kroton) Limited, Company No. 1-63957, a company established and incorporated under the *Companies Act* 1997 and which was previously named Kroton No. 2 Limited;
- "National Petroleum (Kroton) Shares" means all of the issued share capital and all rights in respect of unissued shares of National Petroleum (Kroton);
- "participating interest" has the meaning given to that term in the *Oil and Gas Act* 1998;
- "Permitted Superannuation Fund" means a superannuation fund authorised under Subsection 8(1) of the *Superannuation (General Provision) Act* 2000 and any fund of a similar nature established under the *National Provident Fund Act* 1980, the *Public Officers Superannuation Fund Act* 1990 or the *Defence Force Retirement Benefits Act* 1974;
- "person" includes both natural persons and bodies corporate;
- "petroleum project" has the meaning given to that term in the *Oil and Gas Act* 1998;
- "Petromin" means Petromin Papua New Guinea Holdings Limited, Company No. 1-59327, established under the *Petromin Papua New Guinea Holdings Limited Authorisation Act* 2007, and which, upon the *Kumul Minerals Holdings Limited Authorisation Act* 2015 coming into operation will be renamed Kumul Minerals Holdings Limited;
- "Recognised Stock Exchange" means any "stock exchange" approved under Section 20 of the *Securities Act* 1997 and any "stock exchange" as defined in Subsection 2(1) of the *Companies Act* 1997;
- "Recognised University" means The University of Papua New Guinea, Papua New Guinea University of Technology, Divine Word University, Pacific Adventist University, any university that is a member of the Association of Commonwealth Universities and any other recognised and reputable university;
- "Relevant Field" means any of the fields of geology, engineering, environment, climate, law, corporate governance, accounting, banking, economics, finance, human resources, marketing or business management;
- "Sovereign Wealth Fund" means the Sovereign Wealth Fund established by Section 212A (*Sovereign Wealth Fund*) of the *Constitution* and the *Organic Law on Sovereign Wealth Fund*;
- "State" means the Independent State of Papua New Guinea;

"subsidiary" has the meaning set out in Subsection 5(1) of the *Companies Act* 1997 and in respect of Kumul Petroleum Holdings, includes as provided in this Act, National Petroleum (Kroton);

"Trustee Delegate" means the Minister;

"UBSA" means the Umbrella Benefits Sharing Agreement signed at Kokopo on 23 May 2009 between the State, the Southern Highlands Provincial Government, Gulf Provincial Government, Central Provincial Government, Fly River Provincial Government, South Koroba Local-level Government, North Koroba Local-level Government, Hayapuga Local-level Government, Komo Local-level Government, Hulia Local-level Government, Lake Kutubu Local-level Government, Erave Local-level Government, West Kikori Local-level Government, West Hiri Local-level Government, Nomad Local-level Government and the Project Landowners listed in the Schedule to that Agreement.

3. Application of the Act.

- (1) This Act is not limited in its application.
- (2) Without limiting Subsection (1), this Act binds —
 - (a) the State; and
 - (b) each Kumul Petroleum Company; and
 - (c) the Kumul Petroleum Trustee as trustee of the Kumul Petroleum Share Trust; and
 - (d) the Trustee Delegate, if any, to whom the Kumul Petroleum Trustee has delegated powers as provided in Subsection (5); and
 - (e) the IPBC and each of its subsidiaries; and
 - (f) Petromin and each of its subsidiaries.

(3) Once the Kumul Petroleum Trust Deed has been executed and becomes effective in accordance with its terms, it shall not be amended except in accordance with its terms.

(4) If the Kumul Petroleum Trust Deed is amended as provided in Subsection (3) then it shall apply in all respects as the Kumul Petroleum Trust Deed under and for the purposes of this Act.

(5) Rights, powers and privileges granted to or bestowed on the Kumul Petroleum Trustee by this Act may, if so provided under the terms of the Kumul Petroleum Trust Deed, be delegated to and exercised by the Trustee Delegate but to the extent only of the express provisions of that delegation and in any event, excluding the Kumul Petroleum Trustee's right of delegation itself, and then only

for a limited period of no longer than five years unless such delegation is renewed or re-affirmed by the Kumul Petroleum Trustee for a further period not exceeding five years on each occasion.

PART II. — KUMUL PETROLEUM SHARE TRUST.

4. Establishment of Kumul Petroleum Share Trust.

(1) Immediately following the coming into operation of this Act, the Kumul Petroleum Trustee, the State and Kumul Petroleum Holdings shall enter into the Kumul Petroleum Trust Deed, whereby, the Kumul Petroleum Trustee, as trustee, holds the Kumul Petroleum Holdings Shares for and on behalf of the State.

(2) The office of the Kumul Petroleum Trustee shall immediately and automatically succeed to each person who holds, from time to time, the office of Prime Minister, established by Section 142 (*The Prime Minister*) of the *Constitution*.

(3) The State, as beneficiary of the Kumul Petroleum Trust, accepts each successive appointment as the Kumul Petroleum Trustee of each person who holds, from time to time, the office of Prime Minister, established by Section 142 (*The Prime Minister*) of the *Constitution*.

PART III. — KUMUL PETROLEUM HOLDINGS.

5. Transfer of Kumul Petroleum Holdings.

(1) Immediately following the coming into operation of this Act, the State, acting through the Minister, shall direct that all of the issued shares in Kumul Petroleum Holdings of which IPBC is the registered holder on the date on which this Act comes into operation, and any right, title and interest of IPBC in and to such shares in Kumul Petroleum Holdings including the right to receive any amount of money in respect of such shares including any dividend, distribution or loan, are transferred to and become the property of the Kumul Petroleum Trustee, without payment of any consideration and free of any trust, rights, interests and claims under the General Business Trust and the register of members of Kumul Petroleum Holdings maintained under the *Companies Act* 1997 will be taken to have been amended accordingly.

(2) No consideration is payable to IPBC, whether in its own right or in its capacity as trustee under the General Business Trust, in respect of the transfer under Subsection (1).

(3) For the avoidance of doubt, IPBC, whether in its own right or in its capacity as trustee under the General Business Trust, shall not be entitled to claim or receive any compensation or payment from the Kumul Petroleum Trustee or

from any Kumul Petroleum Company, in respect of or relating to the transfer under Subsection (1).

(4) For the avoidance of doubt, the transfer of all of the issued shares in Kumul Petroleum Holdings referred to in Subsection (1) shall include the transfer of all of the issued shares in each of the subsidiaries of Kumul Petroleum Holdings including, without limitation, NPCP Investments Limited Company No. (1-104026) and National Petroleum (Kroton).

6. Change of Company Name.

(1) On the coming into operation of this Act, the name of Kumul Petroleum Holdings, which prior to this Act coming into effect is "NPCP Holdings Limited", is changed to "Kumul Petroleum Holdings Limited".

(2) On the coming into operation of this Act comes into effect the Registrar of Companies appointed in accordance with Subsection 394(1) of the *Companies Act 1997* must proceed to —

- (a) enter the new name, "Kumul Petroleum Holdings Limited", on the register of companies incorporated in Papua New Guinea; and
- (b) issue a certificate of incorporation in the prescribed form recording the change of name to "Kumul Petroleum Holdings Limited".

(3) For the avoidance of doubt, the change of name under this section does not affect the identity of Kumul Petroleum Holdings and does not affect any legal proceedings by or against Kumul Petroleum Holdings.

7. Establishment and Operation of Kumul Petroleum Holdings.

(1) Kumul Petroleum Holdings is established and incorporated under the *Companies Act 1997*.

(2) The constitution of Kumul Petroleum Holdings must contain provisions that —

- (a) require it to operate as a commercial enterprise as efficiently as comparable businesses in Papua New Guinea and to maximise the value of shareholder investment in Kumul Petroleum Holdings; and
- (b) provide that subject to Kumul Petroleum Holdings satisfying the requirements of Paragraph (a), the principal objective for which Kumul Petroleum Holdings has been established is to hold and develop petroleum interests and projects in Papua New Guinea and for that purpose —
 - (i) to participate in the LNG Project through National Petroleum (Kroton), such that through National Petroleum (Kroton),

Kumul Petroleum Holdings is an investor in and participant in the LNG Project; and

- (ii) to participate, either alone or in conjunction with others, in the exploration for and the development, production, processing, transportation and marketing activities, including all related upstream, midstream and downstream activities, of and in respect of hydrocarbons in both liquid and gaseous forms, in Papua New Guinea; and
 - (iii) where the economic, financial and technological circumstances permit, to be sensitive to the needs of the physical environment in which it operates and to utilise and develop its assets in line with the best practices and the principles of sustainable development; and
- (c) to exhibit a sense of social responsibility by having regard to the interests of the communities in which it operates.

8. Independence of Kumul Petroleum Companies.

- (1) Notwithstanding the identity of any party owning any of the shares in Kumul Petroleum Holdings, each of the Kumul Petroleum Companies are not, and shall not for any purpose, be taken or characterised as being —
- (a) the State; or
 - (b) an agent of the State, unless expressly appointed for such purpose by the State with the express concurrence of Kumul Petroleum Holdings or the subsidiary concerned; or
 - (c) an instrumentality of the State.
- (2) No asset of any Kumul Petroleum Company —
- (a) shall be vested in or transferred to the State pursuant to this Act, the IPBC Act, the *Liquefied Natural Gas Project (State Participation) Act 2008* or the *Oil and Gas Act 1998*; and
 - (b) is or shall be a public asset for any purpose and no such assets may be vested in or transferred to the State except on the liquidation of Kumul Petroleum Holdings under Part XVIII of the *Companies Act 1997*,
- except as provided in this or any other Act.
- (3) No Kumul Petroleum Company is or shall be entitled to render the State liable for its or their debts, liabilities or obligations.
- (4) The State shall not guarantee or indemnify any —
- (a) Kumul Petroleum Company in respect of any of its assets or liabilities (including any overdraft or other financial accommodation); or

(b) third person in respect of any debt or liability of any Kumul Petroleum Company, unless, in each particular instance, the National Executive Council with the concurrence of Kumul Petroleum Holdings expressly agrees that the State may do so.

(5) The Kumul Petroleum Companies shall pursue their objects and perform their functions and duties and exercise their powers and authorities independently of, and free from, interference or direction by the State, State Ministers or Members of the National Parliament or other Provincial or Local-level Governments or officers of the public service other than as provided expressly in this or any other Act.

(6) For the avoidance of doubt, the Kumul Petroleum Companies are free to engage in all of the activities of a commercial enterprise including, without limitation, acquiring, developing and disposing of assets and borrowing and otherwise obtaining financial accommodation, independently of, and free from, interference or direction by the State, Ministers or Members of the National Parliament or other Provincial or Local-level Governments or officers of the Public Service, other than as provided expressly in this or any other Act.

(7) Subsections (5) and (6) do not apply to any action taken by the Kumul Petroleum Trustee in accordance with the terms of the Kumul Petroleum Trust Deed.

(8) No Kumul Petroleum Company is a Department of the National Public Service, and no officer of a Kumul Petroleum Company (including the Managing Director) is an officer in the National Public Service.

9. The holding and disposal of Kumul Petroleum Company Shares.

(1) Subject to this Act, the Kumul Petroleum Trustee shall acquire and hold all of the Kumul Petroleum Holdings Shares under the terms of the Kumul Petroleum Share Trust.

(2) The Kumul Petroleum Trustee shall not do or permit anything to be done that would or could result in the State ceasing to be beneficially entitled to all of the Kumul Petroleum Holdings Shares.

(3) No Kumul Petroleum Company shall do or permit anything to be done that would or could result in —

- (a) a breach of Subsection (2); or
- (b) Kumul Petroleum Holdings ceasing to be the sole holder and beneficial owner of all of the National Petroleum (Kroton) Shares; or
- (c) a Kumul Petroleum Company that has benefitted from a transfer or direction to transfer or a nomination under Section 175A of the *Oil*

and Gas Act 1998, ceasing to be a wholly owned subsidiary of Kumul Petroleum Holdings.

- (4) The prohibitions contained in Subsection (3) shall not apply —
- (a) to any transfer or direction to transfer National Petroleum (Kroton) Shares in a manner that gives effect to the provisions of the UBSA and such that as a consequence, National Petroleum (Kroton) ceases to be a wholly owned subsidiary of Kumul Petroleum Holdings but remains a subsidiary of Kumul Petroleum Holdings; or
 - (b) to an issue or transfer of shares in a Kumul Petroleum Company, other than Kumul Petroleum Holdings, to a Permitted Superannuation Fund where that issue or transfer is expressly permitted by this or any other Act; or
 - (c) to a listing of shares in a Kumul Petroleum Company, other than Kumul Petroleum Holdings, on a Recognised Stock Exchange where that listing is expressly permitted by this or any other Act.

10. Directors of Kumul Petroleum Holdings.

(1) The Board of Kumul Petroleum Holdings shall comprise of seven directors.

(2) At least five of the directors of Kumul Petroleum Holdings must be citizens of Papua New Guinea and not more than two of the directors of Kumul Petroleum Holdings may be non-citizens of Papua New Guinea.

(3) One of the directors of Kumul Petroleum Holdings shall be the Managing Director of Kumul Petroleum Holdings.

(4) Each of the directors of Kumul Petroleum Holdings, other than the Managing Director, shall be appointed for a term of up to three years with such respective terms of office ensuring an orderly system of retirement, reappointment and replacement as are determined from time to time by the Kumul Petroleum Trustee.

(5) In determining the respective terms of directors of Kumul Petroleum Holdings necessary to satisfy the requirements of Subsection (4), the Kumul Petroleum Trustee shall seek to ensure that no more than 50% of the directors retire in any 12 month period.

- (6) In respect of the Board of Kumul Petroleum Holdings —
- (a) no person shall be appointed to, or remain on the Board if that person—
 - (i) is not a fit and proper person as determined by the Kumul Petroleum Trustee; or

- (ii) except in the case of the Managing Director, is an employee or other executive officer of any Kumul Petroleum Company; or
 - (iii) has been a Director of Kumul Petroleum Holdings for a maximum period of nine years in aggregate, provided that nothing in this Subparagraph (iii) shall apply to a Managing Director; or
 - (iv) has turned 72 years of age; or
 - (v) does not, as a minimum, hold an undergraduate degree bestowed by a Recognised University; or
 - (vi) is a member, or candidate for election as a member, of the National Parliament, or a Provincial Government or Local-level Government or is a member of a Local-level Government Special Purposes Authority appointed under Section 42 of the *Local-level Governments Administration Act 1997*; or
 - (vii) is an officer or employee of the public service or a statutory authority or agency; or
 - (viii) is an office-holder, or candidate for election as an office-holder, in a registered political party; and
- (b) the requirements of Subparagraph (a)(v) may be waived by the Kumul Petroleum Trustee in respect of no more than one director who otherwise satisfies the remaining requirements of Subparagraph (a) and who has at least 15 years' senior management experience in any business or field that provides significant involvement with the oil and gas sectors and the person is so endorsed, for the purpose of the waiver, unanimously by all of the current directors of Kumul Petroleum Holdings; and
- (c) except as may be provided in this or any other Act, a person who has held an office or position or who has been a candidate for election as referred to in Subparagraphs (a)(vi), (vii) and (viii), shall not be appointed as a director of Kumul Petroleum Holdings until 12 months have elapsed following that person ceasing to hold the office or position or ceasing to be a candidate for election; and
- (d) a director who intends to nominate to hold office as referred to in Subparagraph (a)(vi) shall resign as a director no later than six months prior to such nomination.

(7) Without limiting Subsection (6), no person shall be appointed to the Board of Kumul Petroleum Holdings at any time after the second anniversary of this Act coming into operation unless that person has at least ten years' experience

working in —

- (a) a Relevant Field; or
- (b) any business or field that provides significant involvement with the oil and gas sectors.

(8) The members of the Board of Kumul Petroleum Holdings shall be appointed by the Kumul Petroleum Trustee as follows:

- (a) before any appointment is made, the Board of Kumul Petroleum Holdings shall inform the Kumul Petroleum Trustee of the number of vacancies to be filled and shall at the same time notify the Kumul Petroleum Trustee —
 - (i) of persons, including from among their own number, who in their opinion have the qualifications and experience meeting the requirements for directors specified in this section and who are prepared to accept appointment as a member of the Board; and
 - (ii) of the details of those persons identified in Subparagraph (i), including their respective qualifications and experience; and
- (b) the Kumul Petroleum Trustee shall appoint the requisite number of Board members duly qualified under this section from the persons notified by the Board of Kumul Petroleum Holdings under Paragraph (a); and
- (c) in making appointments under Paragraph (b) , the Kumul Petroleum Trustee shall not be limited to the persons initially advised under Paragraph (a) and may request the Board to provide further names of qualified persons under that paragraph until the Kumul Petroleum Trustee has completed the making of those appointments.

(9) No director shall be appointed as Chairman of the Board of Kumul Petroleum Holdings unless, for the purpose of satisfying the matters in Subsection (7), that director has a minimum five years' additional experience in those matters.

(10) No director shall be appointed Chairman of Kumul Petroleum Holdings while that director holds the position of Chairman of Petromin or Chairman of IPBC.

(11) The Chairman of the Board of Kumul Petroleum Holdings shall be appointed as follows:

- (a) the Board of Kumul Petroleum Holdings shall —
 - (i) identify those among their number having the qualifications and experience meeting the requirements specified in Subsections (6), (7) and (9) and who are prepared to accept appointment as Chairman of the Board of Kumul Petroleum Holdings; and

- (ii) notify the Kumul Petroleum Trustee of those Board members as so identified and provide the Kumul Petroleum Trustee with details of their respective qualifications and experience; and
- (b) the Kumul Petroleum Trustee shall select the Chairman from the Board members notified under Subparagraph (a)(ii) and the Board of Kumul Petroleum Holdings shall appoint that person as the Chairman.

(12) The Directors of Kumul Petroleum Holdings, apart from the Managing Director, shall be paid such annual remuneration and reasonable attendance allowances as are consistent with non-executive board appointments in comparable oil and gas companies in the private sector and, in that respect —

- (a) the Chairman of the Board of Kumul Petroleum Holdings shall, from time to time, commission and provide to the Kumul Petroleum Trustee a report from an independent internationally recognised firm of human resources professionals or chartered accountants which recommends to the Kumul Petroleum Trustee an appropriate annual remuneration and reasonable attendance costs for the directors; and
- (b) where the Kumul Petroleum Trustee is not satisfied with the recommendations in the report provided under Paragraph (a), the Kumul Petroleum Trustee may obtain a second report from an independent internationally recognised firm of human resources professionals or chartered accountants; and
- (c) the Kumul Petroleum Trustee shall determine the annual remuneration and reasonable attendance allowances for directors consistent with the recommendations of the report provided under Subparagraph (a) provided, however, that where a second report has been provided under Paragraph (b) and there is a substantial difference in the recommendations of the reports provided under Paragraphs (a) and (b), the determination of the Kumul Petroleum Trustee will be consistent with the recommendations of a third report from an independent internationally recognised firm of human resources professionals or chartered accountants which takes into account the reports provided under Paragraphs (a) and (b).

(13) A director of Kumul Petroleum Holdings may be removed at any time by the Kumul Petroleum Trustee provided, however, that no more than three directors may be removed by the Kumul Petroleum Trustee in any 12 month period.

11. Directors of subsidiaries of Kumul Petroleum Holdings.

- (1) The Chairman and Directors of each of the wholly owned subsidiaries of

Kumul Petroleum Holdings shall be appointed by the Board of Kumul Petroleum Holdings.

(2) The Boards of the wholly owned subsidiaries of Kumul Petroleum Holdings shall each comprise no more than seven directors.

(3) One of the directors of each of the wholly owned subsidiaries of Kumul Petroleum Holdings shall be the Managing Director of that wholly owned subsidiary.

(4) At least half of the directors of each of the wholly owned subsidiaries of Kumul Petroleum Holdings shall be citizens of Papua New Guinea.

(5) The directors of each of the wholly owned subsidiaries of Kumul Petroleum Holdings, other than the Managing Directors and any of the directors who is an employee, shall be appointed for a term of up to three years.

(6) No person shall be appointed to, or remain on, the Board of any wholly owned subsidiary of Kumul Petroleum Holdings if that person is determined by the Board of Kumul Petroleum Holdings not to be a fit and proper person.

(7) A director of a wholly owned subsidiary of Kumul Petroleum Holdings may be removed at any time by the Board of Kumul Petroleum Holdings.

(8) Subject to the *Companies Act* 1997 and to the other provisions of this section, the directors of wholly owned subsidiaries of Kumul Petroleum Holdings shall be paid such annual remuneration and reasonable attendance allowances as are determined by the Board of Kumul Petroleum Holdings.

(9) The Chairman and directors of each of the subsidiaries of Kumul Petroleum Holdings which is not a wholly owned subsidiary, shall be appointed in accordance with the relevant provisions of that subsidiary's constitution and the *Companies Act* 1997.

12. Constitutions of Kumul Petroleum Companies.

(1) The constitutions of each Kumul Petroleum Company may contain provisions that give effect to but are not inconsistent with the provisions of this section.

(2) The constitutions of the Kumul Petroleum Companies may contain provisions providing that —

- (a) in the event of a vacancy in the office of a member of the Board of that company arising by operation of this section, the remaining members may act so long as their number is sufficient to constitute a quorum at a meeting of that company's Board; and
- (b) the exercise of a power or the performance of a function of the Board

of that company is not invalidated by reason only of a vacancy in the membership of that Board; and

- (c) notwithstanding the discovery of —
- (i) a defect in the appointment of a member of that company's Board; or
 - (ii) a person appointed as a member of that company's Board is subsequently disqualified from holding office as a member of that Board,

all meetings and acts of that company's Board and all acts of that person done before the discovery was made are valid as if the person had been or remained duly appointed and was not disqualified,

and such provisions shall, by this section, be lawful and effective in accordance with their terms.

13. Approval of Annual Plans and Dividend Distributions.

(1) Kumul Petroleum Holdings or a subsidiary of Kumul Petroleum Holdings shall not incur any expenditure, or acquire or dispose of any assets during an Accounting Period unless —

- (a) the expenditure or acquisition or disposal of assets is made in accordance with the Annual Plan presented by Kumul Petroleum Holdings to the Kumul Petroleum Trustee and approved by the National Executive Council in accordance with this section; or
- (b) the expenditure or acquisition or disposal of assets is presented by Kumul Petroleum Holdings to the Kumul Petroleum Trustee and subsequently presented by the Kumul Petroleum Trustee to the National Executive Council and approved by the National Executive Council; or
- (c) the total expenditure and value of acquisition of assets in any Accounting Period incurred by Kumul Petroleum Holdings and its subsidiaries on a consolidated or group basis does not exceed —
 - (i) K10,000,000.00; or
 - (ii) such other limit not exceeding K25,000,000.00 as may be determined by the Kumul Petroleum Trustee and advised to Kumul Petroleum Holdings from time to time; or
 - (iii) such other limit as may be advised by the Kumul Petroleum Trustee to the National Executive Council and approved by the National Executive Council and advised to Kumul Petroleum Holdings from time to time; or

(d) the total value of disposal of assets in any Accounting Period incurred by Kumul Petroleum Holdings and its subsidiaries on a consolidated or group basis does not exceed —

- (i) K10,000,000.00; or
- (ii) such other limit not exceeding K25,000,000.00 as may be determined by the Kumul Petroleum Trustee and advised to Kumul Petroleum Holdings from time to time; or
- (iii) such other limit as may be advised by the Kumul Petroleum Trustee to the National Executive Council and approved by the National Executive Council and advised to Kumul Petroleum Holdings from time to time.

(2) Kumul Petroleum Holdings shall, not later than three months before the end of each Accounting Period, submit to the Kumul Petroleum Trustee a proposed Annual Plan in respect of the activities of Kumul Petroleum Holdings and its subsidiaries for the next Accounting Period and upon the Kumul Petroleum Trustee being satisfied with the proposed Annual Plan, the Kumul Petroleum Trustee shall submit the proposed Annual Plan to the National Executive Council for approval.

(3) If an Annual Plan is duly approved by the National Executive Council, it shall, notwithstanding the date of that approval, be binding on Kumul Petroleum Holdings and its subsidiaries in all respects from the commencement of the Accounting Period to which it relates.

(4) No changes to an Annual Plan shall be acted on or be considered valid or effective until approved by the National Executive Council.

(5) In the course of —

- (a) preparing the Annual Plan, in the case of Kumul Petroleum Holdings; and
- (b) considering approval for the Annual Plan, in the case of the National Executive Council,

regard must be had to the need for Kumul Petroleum Holdings and its subsidiaries to be able to meet their debts as and when they fall due.

(6) The Board of Kumul Petroleum Holdings must, from time to time, declare dividends in accordance with Subsection (7) and may fix the time for payment of dividends, which shall be no later than two months after the end of each Accounting Period.

(7) Subject to Sections 50 and 51 of the *Companies Act 1997*, a dividend must be paid directly into the Sovereign Wealth Fund in accordance with the

Organic Law on the Sovereign Wealth Fund in respect of each Accounting Period equal to the amount of available reserves of Kumul Petroleum Holdings (being the accumulated realised earnings from prior periods and the profits earned in the current year) determined on a consolidated or group basis at the end of that Accounting Period less any amount required to be held by Kumul Petroleum Holdings and its subsidiaries to meet the requirements of the approved Annual Plan.

PART IV. — KUMUL PETROLEUM HOLDINGS TO BE STATE NOMINEE.

14. Kumul Petroleum Holdings to be State Nominee.

(1) For so long as all of the Kumul Petroleum Holdings Shares are held beneficially for and on behalf of the State, the State and the Minister responsible for the *Oil and Gas Act* 1998 shall give effect to the provisions of Sections 165 and 175A of the *Oil and Gas Act* 1998 so as to nominate Kumul Petroleum Holdings (or one or more of its subsidiaries) as the exclusive nominee of the State in respect of the participating interest in a petroleum project for which the State's right to effect a nomination has arisen under Section 165 of that Act.

(2) Subsection (1) is subject to the State meeting its obligations to the project area landowners and the relevant Provincial and Local-level Governments, if any, under Section 167 of the *Oil and Gas Act* 1998.

(3) Kumul Petroleum Holdings shall be responsible for the payment of the costs required for the State to meet its obligations under Subsection 167(2) of the *Oil and Gas Act* 1998.

PART V. — TRANSFER OF PETROMIN PETROLEUM INTERESTS.

15. Transfer of petroleum interests held by Petromin.

(1) The State, through the Prime Minister, shall be entitled but not obliged to direct the transfer to Kumul Petroleum Holdings or any of its subsidiaries, of a participating interest in any petroleum project or other interest in any petroleum assets held by Petromin or a subsidiary of Petromin or to which Petromin or a subsidiary of Petromin may become entitled from time to time.

(2) Where the State, through the Prime Minister, has made a direction under Subsection (1), Kumul Petroleum Holdings and Petromin, negotiating in good faith, shall seek to agree on the terms, including the payment of consideration if any, on which the transfer will take place.

(3) The Prime Minister shall determine the terms, including the payment of consideration, if any, on which a transfer referred to in Subsection (1) shall take

place.

PART VI. — LIABILITY TO DUTIES.

16. Exemption from duties.

Notwithstanding anything in any other law, any transfer or direction to transfer or direction to acquire in respect of any asset or right of whatever nature made under Sections 5, 14 or 15 is exempt from any duties, fees, charges, rates, excises or other imposts of a similar kind otherwise charged or imposed on any person under any statute in respect of any such transfer or direction to transfer or assumption, assignment, transfer, acquisition or vesting.

PART VII. — OTHER RIGHTS.

17. Rights in respect of directions under Sections 5, 14 and 15.

(1) This Section applies following the issuance of a direction under Sections 5, 14 and 15.

(2) Kumul Petroleum Holdings may direct any person charged with the signing or executing, registering, receiving or recording of any transfer of a right, title or interest to which the direction or deemed direction applies to —

- (a) provide to Kumul Petroleum Holdings all such assistance as may be required by Kumul Petroleum Holdings to give effect to that transfer; and
- (b) provide Kumul Petroleum Holdings with full details of the right, title or interest to which that transfer relates; and
- (c) give to Kumul Petroleum Holdings all certificates or other evidence or indicia of title to which that transfer relates; and
- (d) sign or execute any such transfer of that interest to the Kumul Petroleum Company concerned; and
- (e) register and record the transfer to the Kumul Petroleum Company concerned notwithstanding that the transfer is not accompanied by the appropriate certificates or other evidence or other indicia of title to the interest concerned; and
- (f) issue replacement certificates or other evidence or indicia of title, duly noting the Kumul Petroleum Company concerned as the registered or recorded holder of the interest concerned and to cancel all previously issued certificates or other evidence or indicia of title,

as is applicable to the role and function of that person and on receiving any such direction or notice that person shall duly and promptly comply with the same in all respects to the extent that that person is reasonably able to do so.

18. No breach of contracts, etc.

Any actions undertaken in compliance with Sections 5, 14 and 15 and the operation of Sections 165 and 175A of the *Oil and Gas Act 1998*, shall not be regarded as —

- (a) prejudicially affecting, or being a breach of or a default under, any contract, deed, instrument or agreement (written or otherwise) or otherwise, a civil wrong; or
- (b) a breach of or default under any provision of any contract, deed, instrument, or agreement prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
- (c) giving rise to any remedy by a party to, or causing or permitting the termination or discharge of, any contract, deed, instrument or such agreement or any judgment, order and process of a court which creates, modifies or extinguishes assets, rights or liabilities (or which would do so if lodged, filed or registered in accordance with any law), because of a change in the beneficial or legal ownership or any asset, right or liability, and where under Section 15, as between Petromin and a Kumul Petroleum Company, Petromin's rights are transferred and assigned to that Kumul Petroleum Company and Petromin's obligations and liabilities are assumed by that Kumul Petroleum Company and, as a consequence, as between Petromin and the Kumul Petroleum Company concerned, Petromin ceases to have the benefit of those rights and ceases to have responsibility for those obligations and liabilities, then those transfers and assignments of rights and those assumptions of obligations and liabilities shall be binding on and enforceable by and against that Kumul Petroleum Company and no claim shall be had against Petromin in respect thereof

PART VIII. — LEADERSHIP CODE.

19. Leadership Code not applicable.

Pursuant to Subsection 26(2) of the *Constitution* —

- (a) the office of a member of the Board of any Kumul Petroleum Company is not an office; and
- (b) an employee of any Kumul Petroleum Company is not a person holding an office,

to and in relation to which Division III.2 of the *Constitution* applies and for the avoidance of doubt, no declaration may be made under any other Organic Law or any Act for the purposes of Subsection 26(3) of the *Constitution* in respect of any

office held by that person.

PART IX. — REGULATIONS.

20. Regulations.

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 purpose of this Act, and in particular for prescribing fees and for penalties of fines not exceeding K200,000.00 or imprisonment for a term not exceeding five years or both for offences against this Act or the Regulations.