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Draft of 23/09/2014

THE ORGANIC LAW ON SOVEREIGN WEALTH FUND.

ALTERATION TO THE PRINCIPLE ORGANIC LAW.

The Government proposes to alter the *Organic Law on Sovereign Wealth Fund*, and pursuant to the requirement of Section 14(2) (*Making of Alterations to the Constitution*) and Organic Laws of the Constitution, I, THEODORE ZURENUOC Speaker of the National Parliament, hereby publish the proposed Law.

Draft of 23/09/2014

PROPOSED LAW TO AMEND THE ORGANIC LAW ON SOVEREIGN WEALTH FUND.

entitled

Organic Law on Sovereign Wealth Fund 2014.

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Draft of 23/09/2014

PROPOSED LAW TO AMEND THE *ORGANIC LAW ON SOVEREIGN WEALTH FUND*

entitled

Organic Law on Sovereign Wealth Fund 2014,

being

An Organic Law to implement Part VIII.IAA (Sovereign Wealth Fund) of the Constitution, to repeal and replace the Organic Law on Sovereign Wealth Fund 2012, and for related purposes,

MADE the National Parliament to come into operation —

- (a) in respect of Part I (Preliminary), Part IV (Sovereign Wealth Fund Board), Part V (Duties and responsibilities of Board Members) and Section 40 - upon certification; and
- (b) in respect of the remainder of the provisions, 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.

Proposed Law to Amend The *Organic Law on Sovereign Wealth Fund*—continued

PART I.—PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENT.

This Organic Law, to the extent that it regulates or restricts a right or freedom referred to in Part 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 expression conferred by Section 46; and
- (c) the right to assembly and association conferred by Section 47; and
- (d) the right to privacy conferred by Section 49; and
- (e) the right to freedom of information conferred by Section 51,

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

2. INTERPRETATION.

- (1) In this Organic Law, unless the contrary intention appears —

“additional profits tax” has the meaning given under the Income Tax Act 1959;

“Appointments Committee” means the Appointments Committee established in accordance with Section 22(1);

“asset” means —

- (a) any kind of real or personal property; or
- (b) any legal or equitable estate or interest in real or personal property; or
- (c) any legal or equitable right;

“Board” means the Sovereign Wealth Fund Board established in accordance with Section 17;

“Board member” means a member of the Board, and includes the Chairman;

“Chairman” means the chairperson of the Board appointed in accordance with Section 23;

“distribution”, in relation to a distribution by a company to a shareholder, means the direct or indirect transfer of money or property, other than the company’s own shares, to or for the benefit of the shareholder, and includes dividends;

“dividend withholding tax” has the meaning given to it in the Income Tax Act 1959;

“fiscal year” has the same meaning given to it in the Public Finances Management Act 1995;

“foreign assets” means assets which are situated in or created under the law of jurisdictions other than Papua New Guinea, but does not include subsidiaries of governmental bodies or state-owned enterprises, or any assets held by such entities;

“fund manager” means an investment fund manager engaged in accordance with Section 36(1);

“governmental body” means —

- (a) the National Government; or
- (b) a provincial government; or
- (c) an arm, department, agency or instrumentality of the National Government or a provincial government; or
- (d) a body set up by statute or administrative act for governmental or official purposes;

Proposed Law to Amend The *Organic Law on Sovereign Wealth Fund—continued*

“holding company” means a company created for the purpose of holding shares of other companies on behalf of the State, and which does not produce goods or provide services in itself;

“investment mandate” means the investment mandate issued by the Minister to the Board in accordance with Section 8;

“investment strategies” includes rules, policies and directions determined by the Board in accordance with Section 9;

“make public” means publish in the National Gazette, in media (including nationally circulated newspapers) and, where applicable, on a website maintained by or under the direction of the Board or the department responsible for treasury matters;

“minerals” means all valuable non-living substances excluding petroleum obtained or obtainable from land;

“mineral and petroleum receipts” means —

- (a) mining and petroleum taxes; and
- (b) distributions due to the State from entities holding interests for and on behalf of the State, including their subsidiaries, in the exploitation (including the sale, development, production or otherwise turning into accounts), of gas, minerals and petroleum owned by the State, as and when determined to be such distributions by the entity;

“mining and petroleum taxes” means direct tax levied on mining, gas, and petroleum projects, including —

- (a) gas income tax; and
- (b) mining income tax; and
- (c) petroleum income tax, as provided for by the *Income Tax Act 1959*, and notwithstanding that Act, includes —
- (d) additional profits tax; and
- (e) dividend withholding tax, and any taxes that replace, substitute or succeed those taxes;

“petroleum” means —

- (a) any naturally occurring hydrocarbons, whether in a gaseous, liquid, or solid state; or
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid, or solid state; or
- (c) any naturally occurring mixture of one or more hydrocarbons, (whether in a gaseous, liquid, or solid state) and any other substance, and includes any processed petroleum, and any petroleum as defined by Paragraphs (a), (b) or (c) that has been returned to a natural reservoir, but does not include coal, shale, or any substance that may be extracted from coal, shale, or other rock;

“relevant accounting period” means a calendar year commencing on each 1 January;

“Savings Fund” means the fund referred to in Section 4(1)(b) and Division III.3;

“Secretariat” means the secretariat established in accordance with Section 34;

“Stabilisation Fund” means the fund referred to in Section 4(1)(a) Division III.2;

“Sovereign Wealth Fund” or “Fund” means the Sovereign Wealth Fund established by Section 212A (Sovereign Wealth Fund) of the Constitution and Section 4 of this Organic Law and is one and the same Fund so named under Section 4(3);

“State” means the Independent State of Papua New Guinea.

- (2) Any reference to a Constitutional Law, or an Act of Parliament, in this Organic Law, is a reference to that Constitutional Law or Act of Parliament, as amended and in force from time to time.

Proposed Law to Amend The *Organic Law on Sovereign Wealth Fund*—continued

3. APPLICATION TO STATE.

This Organic Law binds the State.

PART II.—THE SOVEREIGN WEALTH FUND.**4. SOVEREIGN WEALTH FUND.**

- (1) The Sovereign Wealth Fund of Papua New Guinea is established by Section 212A of the Constitution, and consists of two separate and distinct sub-funds known as —
 - (a) the Stabilisation Fund; and
 - (b) the Savings Fund.
- (2) All moneys paid into or withdrawn from the Fund shall be paid into or withdrawn from, and shall be held and managed by the Board, in accordance with this Organic Law.
- (3) The National Executive Council may designate a name, apart from the name referred to in this Organic Law, to the Sovereign Wealth Fund.

5. OBJECTIVE OF THE FUND.

The objectives of the Sovereign Wealth Fund are to support —

- (a) macroeconomic stabilisation; and
- (b) inter-generational equity; and
- (c) asset management in relation to assets accrued from mineral and petroleum receipts.

6. OWNERSHIP OF THE SOVEREIGN WEALTH FUND.

- (1) The legal ownership of the Sovereign Wealth Fund is vested in the Independent State of Papua New Guinea.
- (2) The Sovereign Wealth Fund shall be managed and invested for the benefit of current and future generations of citizens of Papua New Guinea.
- (3) The Board has exclusive legal custody of, and management responsibility for the Sovereign Wealth Fund, in accordance with this Organic Law.

PART III.—OPERATIONAL RULES.*Division 1.—Investment.***7. FUNCTIONS OF THE MINISTER.**

- (1) The functions of the Minister in connection with this Organic Law are —
 - (a) to determine the investment mandate in accordance with Section 8; and
 - (b) to receive and consider reports from the Board to ensure that it complies with this Organic Law; and
 - (c) to ensure that the objectives of the Sovereign Wealth Fund are being achieved in accordance with Section 5.
- (2) The Minister and the National Executive Council or its agents shall not give directions to the Board, the fund manager, the custodian, the Secretariat, or any third party engaged by the Board, in relation to the operation of the Board, the investment strategy and the management of the Fund, except in accordance with this Organic Law.

Proposed Law to Amend The *Organic Law on Sovereign Wealth Fund*—continued

8. INVESTMENT MANDATE.

- (1) The Board shall invest the Fund, either directly or through investment fund managers, on a prudent commercial basis, consistent with international best practice portfolio management, the investment strategies, the investment mandate and this Organic Law.
- (2) Investments made by the Board are deemed to be investments of the Fund.
- (3) The Minister shall, after consultation with the Board, issue to the Board a written investment mandate in respect of investments of the Fund.
- (4) The investment mandate shall include —
 - (a) directions regarding the classes of assets in which the Fund may be invested and the selection criteria for investments within those classes; and
 - (b) a direction on the acceptable balance between risk and return in the overall Fund portfolio; and
 - (c) directions regarding ethical investment, including policies, standards, and procedures for avoiding prejudice to Papua New Guinea's reputation as a responsible member of the world community; and
 - (d) directions on prohibited or restricted investments, or any investment constraints or limits; and
 - (e) directions relating to the management of credit, liquidity, operational, currency, market, and other financial risks; and
 - (f) such other directions, not inconsistent with this Organic law, as the Minister deems fit.
- (5) Without limiting the investment mandate —
 - (a) investments shall only be made in foreign assets; and
 - (b) the Fund shall not be used as collateral for a loan or otherwise encumbered; and
 - (c) the Fund shall not be used as security or to support any guarantees; and
 - (d) investments of the Fund shall be made in the name of the Board.
- (6) The Minister may, in consultation with the Board and in accordance with the advice of the Department responsible for treasury matters, review the investment mandate and, after such review, may amend the investment mandate.
- (7) The Minister shall —
 - (a) make public as soon as practicable; and
 - (b) table in Parliament at the next immediate sitting, the investment mandate issued or amended under this section following such issuance or amendment and all reports received from the Board.

9. GENERAL INVESTMENT STRATEGIES.

- (1) The Board shall determine the investment strategies, not inconsistent with the investment mandate, and this Organic Law, in respect of investments of the Fund, and shall make public those strategies as soon as is practicable after such determination is made.
- (2) The Board may from time to time amend the investment strategies, as are necessary to give effect to any amendment to the investment mandate and shall make public those strategies as soon as practicable after such amendment has been made.
- (3) The Board shall ensure that investments and of the fund are consistent with the investment strategies, the investment mandate and this Organic Law.
- (4) The Board shall provide a copy of the investment strategies to the Minister.

Proposed Law to Amend The Organic Law on Sovereign Wealth Fund—continued

Division 2. - Stabilisation Fund.

10. PURPOSE OF THE STABILISATION FUND.

The purpose of the Stabilisation Fund is —

- (a) to manage the impact of fluctuations in mineral and petroleum receipts on the economy of Papua New Guinea so as to promote and support macroeconomic stability; and
- (b) to ensure that large foreign currency movements do not affect the competitiveness of the economy.

11. DEPOSITS INTO THE STABILISATION FUND.

(1) The Stabilisation Fund shall comprise —

- (a) all amounts required by this Organic Law to be deposited into the Stabilisation Fund; and
- (b) all earnings from investments of the Stabilisation Fund by the Board.

(2) There shall, as soon as possible following receipt, be paid to the credit of the Stabilisation Fund —

- (a) fifty percent of all mining and petroleum taxes; and
- (b) sixty per cent, or lesser portion provided a corresponding increased portion is deposited into the Savings Fund in accordance with Section 14(2)(b), determined by the Parliament, of the proceeds of sale, wholly or partially —
 - (i) of any entity holding an interest, directly or indirectly, in any mineral or petroleum asset, for and on behalf of the State; or
 - (ii) of the State's interest in any entity holding interests, directly or indirectly, in mineral and petroleum assets; and
- (c) withdrawals of the Savings Fund in accordance with Section 15; and
- (d) seventy five per cent of all distributions from any of the State's holding entities, holding the State's interest, directly or indirectly, in mining or petroleum projects; and ←
- (e) the portion of dividends remaining after Parliament determines the other portion according to Section 14 (2)(d); and
- (f) any other amount allocated under the National Budget.

(3) An Act of Parliament may make further provisions for deposits into the Stabilisation Fund.

12. WITHDRAWALS FROM THE STABILISATION FUND.

(1) For the purpose of this section, "mineral and petroleum receipts" means —

- (a) for the years in which the Fund has not yet been established, has the general meaning provided in Section 2.
- (b) for any year in which the Fund has been established, the sum of deposits into the Stabilisation Fund, made in accordance with Section 11(2)(a), (b), (d) and (e); and

(2) Withdrawals during each fiscal year from the Stabilisation Fund shall be made through the National Budget, and shall not —

- (a) exceed the five (5) year long-term moving average of mineral and petroleum receipts as a share of the non-mineral and non-petroleum receipts of the State; and
- (b) be used for a purpose that is inconsistent with Sections 5 or 10. ~~4~~ (permissible)

Proposed Law to Amend The *Organic Law on Sovereign Wealth Fund*—continued

(3) In giving effect to Subsection (1), the withdrawal must not exceed the product of —

- (a) simple average of the yearly ratio of actual mineral and petroleum receipts to actual non-mineral and non-petroleum receipts for the last five (5) years ending two (2) years prior to the drawdown fiscal year; and
- (b) actual non-mineral and non-petroleum receipts in the National Budget year two (2) years prior to the drawdown fiscal year, being determined according to the following formula:

$$W_t = Y_{t-2} \left\{ \frac{1}{5} \left[\sum_{s=2}^6 \left(\frac{X_{t-s}}{Y_{t-s}} \right) \right] \right\}$$

Where

W_t	=	withdrawals from Stabilisation Fund in year t; and
Y_t	=	non-mineral and non-petroleum receipts in year t; and
X_t	=	mineral and petroleum receipts in year t.

(4) An Act of Parliament may make further rules, not inconsistent with this Organic Law, with respect to withdrawals from the Stabilisation Fund.

Division 3.—Savings Fund.

13. THE PURPOSE OF THE SAVINGS FUND.

The purpose of the Savings Fund is to provide a means of preserving the real value of extracted mineral and petroleum resources through long-term investment for the benefit of current and future generations of citizens of Papua New Guinea.

14. DEPOSITS INTO THE SAVINGS FUND.

(1) The Savings Fund shall comprise —

- (a) all amounts required by this *Organic Law* to be deposited into the Savings Fund; and
- (b) earnings of investments of the Savings Fund.

(2) There shall, as soon as possible following receipt, be paid to the credit of the Savings Fund —

- (a) any surplus of the Stabilisation Fund after its balance reaches US\$1 billion; and
- (b) forty per cent, or a greater portion determined by the Parliament, of the proceeds of sale, wholly or partially —
 - (i) of any entity holding an interest, directly or indirectly, in any mineral or petroleum asset, for and on behalf of the State; or
 - (ii) of the State's interest in any entity, holding interests, directly or indirectly, in mineral and petroleum assets; and
- (c) twenty-five percent of all distributions from any of the State's holding companies, holding interest, directly or indirectly, in mining or petroleum projects; and
- (d) between twenty-five percent and sixty-five percent, whatever percentage is determined by Parliament, of all dividends due to the State from non-holding companies holding interests in mineral or petroleum projects; and
- (e) proceeds from the sale of any non-mining or non-petroleum asset; and
- (f) any other amount allocated under the National Budget.

Proposed Law to Amend The *Organic Law on Sovereign Wealth Fund*—continued

15. **WITHDRAWALS FROM THE SAVINGS FUND.**

- (1) For the purpose of this section, unless the contrary intention appears —

“inflation rate” means the consumer price index, expressed as a percentage, and published quarterly by the National Statistical Office of Papua New Guinea;

“real income” means an amount equal to the earnings of the Savings Fund adjusted by the real interest rate;

“real interest rate” means the actual rate of return, expressed as a percentage, achieved by the Savings Fund, minus the inflation rate;

“real value” means the nominal Kina value adjusted for the annual inflation rate at the end of the fiscal year.

- (2) The capital of the Savings Fund shall not be withdrawn if its effect would be to diminish the Savings Fund to an amount less than the real value of the Savings Fund.

- (3) Withdrawals from the Savings Fund may only be made from the real income of the Savings Fund and shall not occur before the tenth anniversary of the commencement of Part IV of this *Organic Law*.

- (4) Subject to Section 16(1), withdrawals for each fiscal year must be at least equal to the real income of the Savings Fund earned two fiscal years prior to the year in which the withdrawal is being made.

- (5) All withdrawals from the Savings Fund shall be deposited directly into the Stabilisation Fund.

- (6) An Act of Parliament may make further provision with respect to withdrawals from the Savings Fund not inconsistent with this *Organic Law*.

Division 4.—Withdrawal for Operational Costs.

16. **OPERATIONAL COSTS.**

- (1) Notwithstanding Sections 12 and 15, and subject to Subsection (2), payments may be made out of the Sovereign Wealth Fund for any or all of the following purposes —

- (a) to pay any sum that is payable to a fund manager, custodian or other party contracted by the Board in respect of the Fund; and
- (b) to discharge any other administrative costs, expenses, taxes (if applicable), obligations or liabilities (including under an indemnity) directly related to the operation of the Fund properly incurred by the Board.

- (2) Payments under this section shall be made in accordance with an annual budget determined by the Board, as approved by the National Budget.

PART IV.—THE SOVEREIGN WEALTH FUND BOARD.

17. **ESTABLISHMENT OF THE BOARD.**

- (1) The Sovereign Wealth Fund Board is hereby established.

- (2) The Board —

- (a) is a body corporate; and
- (b) has perpetual succession; and
- (c) has a common seal; and
- (d) may sue and be sued in its corporate name; and
- (e) may acquire, hold and dispose of property; and
- (f) has the functions assigned to it by or under this *Organic Law*; and
- (g) has the power conferred on it by or under this *Organic Law* or any other Act.

Proposed Law to Amend The *Organic Law on Sovereign Wealth Fund*—continued

- (3) All courts and persons acting judicially shall take judicial notice of the seal of the Board affixed to a document and until the contrary is proved, shall presume that it was duly affixed.
- (4) The common seal of the Board shall be kept in the custody of the Board or as the Board directs and shall not be used except as authorised by the Board.
- (5) The Chairman, or in his absence, his delegated Board member and the chief executive officer of the Secretariat, shall attest to the affixing of the common seal of the Board.

18. FUNCTIONS OF THE BOARD.

- (1) The primary function of the Board is to manage and invest the Fund in accordance with this Organic Law on behalf of the State.
- (2) Without limiting the generality of Subsection (1), the functions of the Board are —
 - (a) to determine the investment strategies in accordance with Section 9; and
 - (b) to appoint the chief executive officer of the Secretariat; and
 - (c) to appoint fund managers in accordance with Section 37 and other third parties; and
 - (d) to appoint other persons as are necessary to assist the Board in carrying out its functions; and
 - (e) to instruct the fund managers in relation to the Fund's investments; and
 - (f) to determine the functions of the Secretariat in addition to the functions set out in Section 35(1); and
 - (g) to report to the Minister in accordance with Sections 41 and 42; and
 - (h) to confirm that requests for withdrawals from the Fund are consistent with the Organic Law and any related Act of Parliament; and
 - (i) to do all things incidental to or conducive to the performance of any of the above functions.

19. POWERS OF THE BOARD.

The Board has, in addition to the powers conferred on it by this Organic Law or any other law, such powers as are necessary or convenient to be exercised for or in connection with the performance of its functions, including the power to enter into contracts.

20. DELEGATION.

- (1) The Board may, in writing under the hand of the Chairman, delegate all or any of its powers or functions to the chief executive officer of the Secretariat, other than —
 - (a) this power of delegation; and
 - (b) the function given to it in Section 18(2)(a), (b), (f) and (h).
- (2) A delegation under Subsection (1) is revocable by the Board, in writing under the hand of the Chairman, and at the discretion of the Board.
- (3) A delegation made under this section does not remove the Board's authority to perform the function or power that has been delegated.

21. MEMBERSHIP OF THE BOARD.

- (1) The Board shall consist of —
 - (a) six members who shall be appointed in accordance with Section 22; and
 - (b) the departmental head of the Department responsible for treasury matters, ex-officio.

Proposed Law to Amend The *Organic Law on Sovereign Wealth Fund*—continued

- (2) The ex-officio member may only be alternated by his deputy.
- (3) Board members shall not have alternate member.

22. APPOINTMENT OF BOARD MEMBERS.

- (1) The Appointments Committee is hereby established.
- (2) The Head of State shall acting with and in accordance with the advice of the Appointments Committee, appoint each Board member, other than the ex-officio member.
- (3) The Appointments Committee shall consists of —
 - (a) the Prime Minister, who is the Chairman; and
 - (b) the Leader of the Opposition; and
 - (c) the Governor of the Bank of Papua New Guinea; and
 - (d) the Auditor-General; and
 - (e) the President of the Papua New Guinea Chamber of Commerce and Industry.
- (4) Before the Appointments Committee advises the Head of State to appoint a person as a member of the Board, at least four of the members of the Appointments Committee shall be satisfied that the person —
 - (a) is qualified for appointment to the Board in accordance with Section 24; and
 - (b) is not disqualified from appointment to the Board under Section 25; and
 - (c) has been shortlisted, from amongst a list of candidates, by the screening committee to the Appointments Committee.
- (5) Each Board member, other than the ex-officio member, shall —
 - (a) be appointed for a term not exceeding 5 years; and
 - (b) be eligible for re-appointment only once.
- (6) For the purpose of appointing the first Board members, the screening committee shall comprise —
 - (a) a deputy departmental head of the department responsible for treasury matters; and
 - (b) a deputy governor of the Central Bank; and
 - (c) a deputy state solicitor.
- (7) Notwithstanding Subsection (5)(a), the terms of office of the first members of the Board shall vary between 3 and 7 years.
- (8) An Act of Parliament shall make further provisions for —
 - (a) the screening committee referred to in Subsection (5), and for the convening of that committee; and
 - (b) the process of appointment of Board members; and
 - (c) the process for and such other matters as may be appropriate.

23. CHAIRMAN OF THE BOARD.

- (1) The Head of State shall acting with, and in accordance with, the advice of the Appointments Committee, appoint the Chairman of the Board.

Proposed Law to Amend The Organic Law on Sovereign Wealth Fund—continued

- (2) Apart from being qualified to be a Board member, the Chairman of the Board shall —
- (a) be a citizen of Papua New Guinea; and
 - (b) be of good moral standing and reputation; and
 - (c) a person of exceptional integrity with independence of mind; and
 - (d) have experience and expertise in —
 - (i) corporate governance and administration, in order to guide a distinctive performance among institutional investors; or
 - (ii) financial portfolio and asset management.
- (3) The Chairman may resign, but may remain a Board member if —
- (a) he elects to do so; and
 - (b) he remains duly qualified; and
 - (c) the maximum number of Board members is not exceeded by reason of appointment of a new Chairman under Subsection (4).
- (4) On resignation of the Chairman, a new Chairman shall be appointed either from among the remaining Board members or outside of the Board, in accordance with this Organic Law.

24. QUALIFICATIONS FOR APPOINTMENT.

A person is not eligible for appointment as a non ex-officio Board member unless he has substantial experience or expertise and professional credibility and significant standing, in any of the following:

- (a) corporate governance; or
- (b) investing in financial assets; or
- (c) the management of investments in financial assets, and in the opinion of all members of the Appointments Committee, he is a person of integrity, independence of mind and good reputation.

25. DISQUALIFICATIONS FOR APPOINTMENT.

A person is not qualified to be, or to remain as, a non ex-officio Board member if he —

- (a) is or becomes a member, or candidate for election as a member, of the National Parliament, or a Provincial or Local-level Government; or
- (b) is an officer, member or employee of a Governmental Body or State-owned enterprise, or becomes such an officer, member or employee; or
- (c) is a member of a Local-level Government Special Purposes Authority; or
- (d) an office-holder, or candidate for election as an office-holder, in a registered political party; or
- (e) is an undischarged bankrupt or is insolvent; or
- (f) has been, or is, a director, or shareholder controller of a bank, financial institution, and incorporated company in Papua New Guinea or overseas and which has been, or is being, wound up or liquidated compulsorily during his tenure as director, or shareholder controller if he is found liable under laws governing the industry; or
- (g) has been, or is being, removed or suspended, by order of a bank or financial institution, or company regulatory authority in Papua New Guinea or in a foreign country, as a director, officer or shareholder controller of any bank or financial institution licensed to operate in Papua New Guinea or in a foreign country, unless such removal or suspension is solely the result of his political affiliation and in no way relates to his performance, conduct or competency as a director, officer or shareholder controller of a licensed bank or financial institution; or

Proposed Law to Amend The *Organic Law on Sovereign Wealth Fund*—continued

- (h) is of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind; or
- (i) is under sentence of death or imprisonment or has previously been sentenced to death or a term of imprisonment; or
- (j) has been found guilty of any indictable offence, including offences involving violence, fraud or dishonesty, whether under the laws of Papua New Guinea or a foreign law; or
- (k) has been found guilty of misconduct in office under the *Organic Law on the Duties and Responsibilities of Leadership*; or
- (l) has or would be prohibited from being a director or member of, or take part in the management of, a company under any law of Papua New Guinea.

26. RESIGNATION.

- (1) A non ex-officio Board member may resign by giving one month's notice in writing to the Head of State, with copies to the Minister and the Chairman of the Appointments Committee.
- (2) The notice period referred to in Subsection (1) commences on the day that the Head of State receives the notice.
- (3) A resignation takes effect —
 - (a) at the end of the notice period; or
 - (b) when it is accepted, in writing, by the Head of State, acting with and in accordance with the advice of the Minister, whichever occurs first.
- (4) The Board member may withdraw his notice of resignation at any time before the resignation takes effect.

27. REMOVAL.

- (1) The Head of State, acting with and in accordance with, the advice of the Appointments Committee, may remove a Board member on any of the grounds given in this section.
- (2) A non ex-officio Board member shall be removed if —
 - (a) in the case of the Chairman, he fails to attend 3 consecutive Board meetings without leave of absence granted by the Minister; or
 - (b) in the case of any other Board member, he fails to attend 3 consecutive Board meetings, without leave of absence granted by the Chairman; or
 - (c) he becomes disqualified in accordance with Section 25; or
 - (d) he fails to comply with Sections 32 and 33; or
 - (e) he fails to comply with any other duty or responsibility conferred on him by this *Organic Law*.
- (3) The question of whether a Board member has failed a duty under this Organic Law is to be determined by the National Court in a matter instituted by the Minister.

28. VACANCY.

- (1) The position of a non ex-officio Board member becomes vacant if —
 - (a) he dies; or
 - (b) he becomes disqualified in accordance with Section 25; or
 - (c) his term expires; or
 - (d) he resigns; or
 - (e) he is removed in accordance with Section 27.

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- (2) A vacancy in the office of a member of the Board must be filled as soon as possible.
- (3) The exercise of a power or the performance of a function of the Board is not invalid by reason only of a vacancy in the membership of the Board.

29. MEETINGS OF THE BOARD.

- (1) The Board shall meet at least once every three months.
- (2) The quorum for the first meeting of the first Board is all members of the Board, thereafter it shall be the Chairman and four other Board members.
- (3) At a meeting of the Board —
 - (a) all matters shall be decided by a majority of the votes of the members present; and
 - (b) the Chairman has a deliberative vote and, if there is an equal number of votes on any matter, also a casting vote.
- (4) Notwithstanding Subsection (2), if the Chairman —
 - (a) is unable to attend a meeting; or
 - (b) has a conflict of interest in respect of a transaction or matter, the Board members present, being no less than four, shall elect a Board member, other than the ex-officio member, to preside over that meeting in whole or in relation to deliberations on the matter or transaction in which the Chairman has a conflict of interest.
- (5) All Board meetings shall be held in Papua New Guinea.
- (6) Subject to this Organic Law, the procedures of the Board are as determined by it.

30. REMUNERATION.

- (1) The Minister may determine the fees and remunerations for the Board members, but not the Chairman, in accordance with the Boards (Fees and Allowances) Act (Chapter 299), with the advice of relevant experts, having regard to the domestic and international market and standards for adequate compensation required for such a Board.
- (2) The remuneration for the Chairman shall be determined in accordance with the Salaries and Remunerations Commission Act 1988.
- (3) The ex-officio Board member is not eligible to receive remuneration, fees and allowances.

PART V.—DUTIES AND RESPONSIBILITIES OF BOARD MEMBERS.

31. DUTIES AND RESPONSIBILITIES OF BOARD MEMBERS.

- (1) A Board member shall not act, or agree to the Board acting, in a manner that contravenes this Organic Law.
- (2) A Board member, when exercising his powers and duties under this Organic Law —
 - (a) shall act in good faith and in the best interests of the Board and the Fund; and
 - (b) shall exercise the standard of care, diligence and skill that would be reasonably expected of a member of such a Board in the same circumstances.
- (3) A Board member or employee of the Board —
 - (a) shall maintain full confidentiality in relation to the business and affairs of the Board; and
 - (b) shall not divulge or use for his benefit or the benefit of any other person, any information relating to the Fund or the Board or his function as a Board member, except in accordance with this *Organic Law* or as otherwise required by law.

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- (4) A Board member, when exercising his powers or performing his duties under this section may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given by —
- (a) an employee of the Board whom the Board member believes on reasonable grounds to be reliable and competent in relation to the matters concerned; and
 - (b) a professional adviser or expert in relation to matters which the Board member believes on reasonable grounds to be within the person's professional or expert competence.
- (5) A Board member who contravenes any of Subsections (1), (2), or (3) commits an offence.

Penalty: fine not exceeding K500,000.00 or imprisonment for a term not exceeding 10 years, or both.

32. CONFLICT OF INTEREST.

- (1) For the purpose of this section, a Board member has a material interest in a matter or transaction where, and only where, the Board member —
- (a) is a party to, or will or may derive a material financial benefit from, the transaction; or
 - (b) has a material financial interest in another party to the transaction; or
 - (c) is a director, officer, or trustee of another party to, or person who will or may derive a material financial benefit from, the transaction, not being a party or person that is a wholly-owned subsidiary of the Board; or
 - (d) is the parent, child, or spouse of another party to, or person who will or may derive a material financial benefit from, the transaction; or
 - (e) is otherwise directly or indirectly materially interested in the transaction, of which the Board is interested or is a party.
- (2) A Board member who has a material interest in a matter or transaction that the Board is interested in, or to which the Board is a party to, shall give notice, in writing, of that interest to the Board as soon as practicable after the Board member becomes aware of his interest in the matter or transaction.
- (3) The notice under Subsection (2) shall —
- (a) provide details of —
 - (i) the nature and extent of the interest, including, monetary value of that interest (where that value can be quantified); and
 - (ii) the relation of the interest to the affairs of the Board; and
 - (b) be given —
 - (i) in writing to the Board; or
 - (ii) at the next Board meeting, as soon as practicable after he becomes aware of the interest.
- (4) Subject to Subsection (5), after a disclosure under Subsection (1), the member —
- (a) shall not be present during any deliberation or decision of the Board with respect to the matter or transaction; and
 - (b) shall not take part in any deliberation or decision of the Board with respect to the matter or transaction; and
 - (c) shall be disregarded for the purpose of constituting a quorum for any such deliberation or decision on that matter or transaction.
- (5) Notwithstanding Subsection (4), a member who discloses an interest under Subsection (1) may be present and vote at a Board meeting if the other members of the Board are satisfied and resolved that the matter disclosed should not disqualify the member from being present and voting.

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- (6) A contravention of this section by a Board member does not affect the validity of any transaction or resolution of the Board.

33. INDEMNITY AND INSURANCE.

- (1) The Board shall indemnify a Board member for any costs incurred by him in any proceeding —
- (a) that relates to liability for any act or omission in his capacity as a Board member; and
 - (b) in which judgment is given in his favour, or in which he is acquitted, or which is discontinued.
- (2) The Board shall indemnify a Board member in respect of —
- (a) liability to any person other than the Board member for any act or omission in his capacity as a Board member; or
 - (b) costs incurred by that Board member in defending or settling any claim or proceeding relating to any such liability, not being criminal liability or liability in respect of a breach of the duty specified in Section 32.
- (3) The Board shall effect insurance for a Board member in respect of —
- (a) liability, not being criminal liability, for any act or omission in his capacity as a member of the Board; or
 - (b) costs incurred by that Board member in defending or settling any claim or proceeding relating to any such liability; or
 - (c) costs incurred by that Board member in defending any criminal proceedings in which he is acquitted.
- (4) The indemnities at Section 34(1) and (2) do not apply to the extent that the liability or costs arose as a result of gross negligence, wilful misconduct or fraud on the part of the Board member being indemnified.
- (5) A Board member is not personally liable for anything done or omitted to be done in good faith in the performance or exercise, or purported performance or exercise, of a function or power under this Organic Law or in the course of carrying out the duties and functions of the Board.

PART VI.—SECRETARIAT.

34. SECRETARIAT.

- (1) There is established a Secretariat to the Board.
- (2) The Secretariat shall consist of —
- (a) a chief executive officer appointed by the Board; and
 - (b) such other officers as are necessary for the carrying out of its functions.
- (3) The chief executive officer —
- (a) is the head of the Secretariat; and
 - (b) is responsible to the Board for the efficient carrying out of its functions; and
 - (c) shall act in accordance with the directions of the Board; and
 - (d) shall appoint such officers of the Secretariat as are necessary to carry out the functions of the Secretariat, subject to the authorities granted by the Board; and
 - (e) shall not be a member of the Board.
- (4) The officers of the Secretariat are employees of the Board.

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35. FUNCTIONS OF SECRETARIAT.

- (1) The functions of the Secretariat are —
 - (a) to provide executive, administrative and secretarial support to the Board; and
 - (b) to do all things as are necessary to give effect to the decisions of the Board; and
 - (c) to provide information to the Board on investment markets; and
 - (d) to provide information to the Board for the appointment of a fund manager, custodian, investment advisers, or any other appointments; and
 - (e) to prepare annual and quarterly reports for the Board; and
 - (f) such other functions as are determined by the Board.
- (2) The Secretariat may do anything incidental to or conducive for the performance of any of the above functions as approved by the Board.
- (3) Any action taken by the Secretariat shall be deemed to be actions of the Board, unless such action is not consistent with the functions of the Board or is contrary to an express direction of the Board.

PART VII. - FUND MANAGERS AND CUSTODIANS.**36. ENGAGEMENT OF FUND MANAGERS.**

- (1) The Board may, through an open, competitive and transparent process, engage such number of fund managers as the Board considers necessary to manage the investments of the Fund.
- (2) The role of a fund manager is to implement the strategies and directions of the Board in relation to the investment of funds.
- (3) The Board shall set the terms and conditions of, and determine the process for, engagement of a fund manager as well as the conditions for the termination of such an engagement.

37. CONSIDERATIONS WHEN APPOINTING FUND MANAGERS.

When appointing a fund manager, the Board may have regard, but is not necessarily limited, to the following considerations:

- (a) a fund manager has a proven sustainable competitive advantage over its competitors; and
- (b) the investment strategies and processes of the fund manager are consistent with the investment objectives of the Fund; and
- (c) the strategies employed by the fund manager to manage operational and financial risk in its organisation; and
- (d) the fund manager meets licensing requirements, under any laws governing investment management, securities or other non-bank financial service of the country in which that candidate is registered; and
- (e) the expected fees; and
- (f) such other considerations as the Board determines necessary for the appointment of a fund manager.

38. ENGAGEMENT OF CUSTODIAN.

- (1) The custodian shall be appointed by the Board in an open, competitive and transparent manner.
- (2) When appointing a custodian, the Board may have regard, but is not necessarily limited, to the following considerations:

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- (a) the custodian's demonstrated sustainable competitive advantage over its competitors in its specialist area; and
 - (b) the custodian's style and asset custody management process; and
 - (c) strategies employed by the custodian to control operational and financial risk in its organisation; and
 - (d) the expectant fees.
- (3) The custodian shall —
- (a) be duly licenced to the extent required by applicable law; and
 - (b) not be a declared bankrupt or insolvent; and
 - (c) not be related to a party which is a declared bankrupt or insolvent.
- (4) The custodian shall be responsible for —
- (a) holding and safe-keeping of assets; and
 - (b) implementing strategies and controls to safeguard the assets; and
 - (c) reporting on assets under its custody; and
 - (d) executing settlements in accordance with the directions and instructions of the Board; and
 - (e) performing any related administrative services for the Fund.
- (5) The Board shall set the terms and conditions of, and determine the process for, engagement of a custodian as well as the conditions for the termination of such an engagement.
- (6) An Act of Parliament may make further provisions for the custodian, not inconsistent with this *Organic Law*.

PART VIII.—FINANCES AND ACCOUNTABILITY.

39. APPLICATION OF THE PUBLIC FINANCES (MANAGEMENT) ACT 1995.

- (1) Part VII (State Tenders and Contracts) of the *Public Finances (Management) Act* 1995 does not apply to the Board in relation to contracting for services to the Board.
- (2) Part VIII (Public Bodies) of the *Public Finances (Management) Act* 1995 (other than Sections 51, 53, 54, 55, 56 and 57) applies to the Board and the Secretariat.

40. ANNUAL AUDIT.

- (1) Nothing in this section affects the application of the *Audit Act* 1989.
- (2) The Board shall appoint, for each accounting period of the Fund or as soon as practicable after the commencement of the relevant accounting period, a reputable accountant or accounting firm who is a registered company auditor under the Accountants Act 1996, to be the auditor of the Fund and to audit the financial statements of the Fund.
- (3) An auditor appointed under Subsection (2) —
 - (a) shall be appointed for a term of 3 years; and
 - (b) shall hold office on such terms and conditions as are determined by the Board; and
 - (c) is eligible for re-appointment.
- (4) In preparing its financial statements, the Board shall endeavour to ensure that it complies with international financial reporting standards, and to provide information on contingent liabilities, and off-balance-sheet transactions.

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- (5) The Board shall appoint a qualified person to be its internal auditor, who shall provide a written audit report as requested by the Board, but no less often than once every three months and a copy of each audit report shall be presented to the Minister.

41. QUARTERLY REPORT.

- (1) The Board shall cause quarterly reports to be provided to the Minister detailing the performance of the Fund.
- (2) The Board shall make public its reports as soon as practicable, but no later than 14 days after the relevant quarterly report is delivered to the Minister.

42. ANNUAL REPORT.

- (1) The Board, through the Chairman shall, as soon as practicable after 31st December each year, but no more than 3 months after that date, prepare and furnish to the Minister and the Governor of the Bank of Papua New Guinea, an annual report on its operations during the year ended on that date, together with financial statements in respect of that year.
- (2) Under Subsection (1), the Board shall provide a report of —
- (a) strategies and policies determined by the Board; and
 - (b) the operations and financial performance of the Board, and the Secretariat; and
 - (c) a balance sheet for the Fund; and
 - (d) investments of the Fund; and
 - (e) all payments into the Fund; and
 - (f) the total income received from investments of the Fund; and
 - (g) the total expenses, assets and liabilities of the Board; and
 - (h) all the withdrawals from the Fund, for the year, together with any other information that the Board considers relevant to the operational management of the Board, or as the Minister directs to be included.
- (3) The Minister shall cause the annual report and financial statements to be tabled in Parliament in the next immediate sitting following receipt of the report.
- (4) The Board shall ensure that the annual report, and all other reports received from the Board, is made public as soon as practicable, but not later than 14 days after the annual report is delivered to the Minister.

PART IX.—MISCELLANEOUS.

43. COMPLIANCE WITH HOST COUNTRIES' LAWS AND REGULATORY PRINCIPLES.

The Board shall not operate or be managed, and the Fund shall not be invested, in a manner that breaches the laws of any host country in which the Fund is invested.

44. EXEMPTION FROM TAXATION.

The revenue of the Fund is exempted from income tax in Papua New Guinea.

45. REPEAL OF ORGANIC LAW ON SOVEREIGN WEALTH FUND ACT 2012.

The *Sovereign Wealth Fund Act 2012* is repealed.