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No. of 2017

PUBLIC MONEY MANAGEMENT REGULARISATION BILL 2017

EXPLANATORY MEMORANDUM

PUBLIC MONEY MANAGEMENT REGULARISATION BILL 2017

OUTLINE

This Bill has two objectives. The first is to deal with the hypothecation or earmarking of non-tax revenue collected by public and statutory bodies. The second is to ensure that the management and control of public funds is strengthened and to ensure that value for money is delivered in compliance with lawful processes to spend public funds.

Public funds that are raised by public and statutory bodies as non-tax revenue rightly belong in the Consolidated Revenue Fund so that they may be appropriated for expenditure by this Parliament to meet the objectives of the Executive Government.

It has been the practice of some public and statutory bodies to retain, without authority, this non-tax revenue to meet their operational and other expenditures. These expenditures have taken place outside the budget process and this is unacceptable to the Executive Government. Some, but not all, public and statutory bodies do have legislation in place that allowed them to retain this non-tax revenue, but those provisions have always offended against the best principles of public financial management and this Bill remedies those matters.

This Executive Government is strongly committed to strengthening the legal framework governing public finance in order to improve and effectively manage the allocation of our public resources. Parliament is the only body that will determine the total allocation of public resources and this Bill is further empowers this Parliament to ensure that all public funds are allocated for expenditure only by this Parliament.

Payments by public and statutory bodies for works, goods or services should take place only the basis of compliance with procurement process set out in the Public Finances (Management) Act and failure to comply with this should result in a personal and not public liability.

ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum.

Bill *Public Funds Management Regularization Bill 2017*

CRF Consolidated Revenue Fund

PFMA *Public Finances (Management) Act*

SBC Strategic Budget Committee

NOTES ON CLAUSES

Section 1 – Compliance with Constitutional Requirements

Section 1 provides that the Bill, when enacted, has been drafted to be compliant with the requirements of the Constitution and has taken into account the National Goals and Directive Principles and the Basic Social Obligations and has been made in and in relation to the national interest.

Section 2 – Interpretation

Section 4 sets out the definitions of key terms used in the Bill. Those key terms not defined here are defined in the PMFA.

Section 3 – Application of Act

This Section provides that the Bill will apply to public and statutory bodies but not:

- the Bougainville Government;
- any religious statutory body;
- the Kumul Holdings Entity – Kumul Consolidated Holdings, Kumul Petroleum Holdings and Kumul Minerals Holdings; and
- sub-national governments and their public and statutory bodies,

in relation to public money (defined by this Bill to be non-tax revenue).

Section 4 – Integrity of Constitutional Institutions

This Section provides that this Bill will not impact the functional mandates and integrity of Constitutional institutions but will ensure that they comply with financial management of public money (defined by this Bill to be non-tax revenue).

Constitutional institutions are those bodies that are created by the Constitution and are considered statutory bodies and subject to this Bill.

Section 5 – Interpretation of Inconsistent Legislation

This Section provides that the Bill is subject to the PFMA and if there are inconsistencies with this Bill and the PFMA then the PFMA prevails.

This Section further provides that where there are any inconsistencies between the Bill and:

- any existing legislation, including subordinate legislations, or
- any agreement or undertaking

in relation to the management and control of public finances then the provisions of this Bill will prevail and those arrangements will be void and of no effect.

This Section provides that any agreement or undertakings in relation to the control and management of public money that are voided by this Bill are not contestable in court or tribunal as these are properly determined by Parliament through the budgetary process.

Section 6 – Payment of Public Money to CRF

This Section provides that once the Bill is approved and comes into operation all public money (defined by this Bill to be non-tax revenue) will be transferred to a single revenue bank account specified by the Secretary for Finance.

This Section further provides that public money will only be held by public bodies and statutory authorities in accordance with the Bill (and the PFMA).

An amount equivalent to ten per cent of the public money collected by the agencies will be transferred by the Secretary for the Department of Finance to the agency's operating account.

Section 7 – Bank Accounts of Public and Statutory Bodies

This Section provides that the public money (defined by this Bill to be non-tax revenue) held by public and statutory bodies, that are subject to this Bill, shall be limited to a single operating bank account and such Trust Accounts as required. The operating accounts shall only contain funds appropriated by the National Budget, including public money transferred through this Bill.

Trust accounts shall only hold funds appropriated through the budget process and donor funds authorized by the trust instrument of that account.

All public funds not authorized by the PMFA and this Bill to be held outside the designated CRF bank accounts shall be transferred into them by Secretary for Department of Finance.

Bank accounts, called revenue bank accounts, will be opened by the Secretary for Department of Finance to hold the full gross collection of public funds and this will be banked by the collecting agency.

Secretary for the Department of Finance is authorized by this Bill to implement provisions of this Bill that require transactional details of bank accounts of public and statutory bodies covered by this Bill to ascertain the daily flows of public money and the quantum that should be transferred to CRF or the revenue account. Any funds that are not public money or appropriated public funds will be returned to the public or statutory body.

Section 8 – Strategic Budget Committee

This Section provides that the Secretaries for the Departments of Treasury (Chairman) and Finance and will constitute the SBC. Other members may be co-opted to the SBC if required by the mandatory SBC members.

The SBC will receive submissions from public or statutory bodies if a greater percentage than ten per cent of public money (defined by this Bill to be non-tax revenue) they collect daily is sought for retention for their operational budget. The Submission shall contain all relevant information on their operational expenses including staffing, recurrent outgoings and costs, and activities to be undertaken in that financial year to allow an informed decision by SBC.

All decisions of the SBC will have no force until ratified by the Treasurer and with this being consistent with the PFMA. The Treasurer shall table in Parliament all details of the determination made under this Bill at the next Parliament sitting.

Transfers of the authorized percentage of public money to the public or statutory body shall be done by the Secretary of Finance to either the body's operating account or a trust account, as appropriate.

This Section provides that the Secretary for Treasury can issue Treasury Instructions to govern the conduct and control of the operations of the SBC and any administrative arrangements to support it.

Section 9 – Judicial review of Strategic Budget Committee

Determination of the SBC that are ratified by the Treasurer will not be the subject of any judicial or administrative review. These are effectively National Budget matters and these will not be the subject of decision by the courts.

If a public or statutory body does try and commence legal action to review SBC determinations or Treasurer's ratifications, they are prohibited from doing so other than in compliance with the Attorney-General Act 1989 which vests the Attorney-General with the sole power to brief out cases for the State. Before the Attorney-General exercises that power, the State Solicitor shall certify to the Attorney-General whether the lawyers to be appointed are experienced and competent in the area of law to represent a public or statutory body. The Attorney-General is to satisfy himself that all procurement laws in Papua New Guinea have been complied with to the extent necessary for him to exercise his powers. These provisions ensure that only competent lawyers are appointed that have been procured in accordance with the law and not just selected at random.

Lawyers of public and statutory bodies shall receive or charge for any fees or disbursements only the fees and charged that are sanctioned by the relevant court on the court approved scale of fees. This provision prevents fee agreements that are in excess of reasonable fees and charges.

To protect the State from vexatious legal actions, any person seeking injunctions or other declaratory relief in respect of any provision of this Act shall first pay to the court the amount that the State demands to be paid to secure payment of the State's legal costs, or the order in respect of the injunctive or their claims will be dismissed. All claims under this Act are to be heard by the courts within 10 working days of the granting of any injunction or declaratory relief.

Section 10 – Legal representation of public and statutory bodies

This provision builds on Section 9 and for the purposes of the Act, a public or statutory body shall not engage legal representation, commence any action or other proceeding in any court or tribunal or procure or contract for legal representation for any purpose other than in compliance with the Attorney-General Act 1989, which vests the Attorney-General with the sole power to brief out cases for the State.

Just as in the previous Section, the State Solicitor is to certify whether the lawyers to be appointed are experienced and competent in the area of law to represent a public or statutory body. The Attorney-General is also to satisfy himself that all procurement laws in Papua New Guinea have been complied with to the extent necessary for him to exercise his powers.

Just as in the previous Section, lawyers of public and statutory bodies shall receive or charge for any fees or disbursements only the fees and charged that are sanctioned by the relevant court.

The scope of this Section has been widened to given this protection to Provincial Government or Local-level Government established under the Organic Law on Provincial Governments and Local-level Government and covers the statutory bodies established by a Provincial Government or Local-level Government or their subsidiary statutory bodies.

Section 11 – Claim against the State not enforceable in certain circumstances

Under the Public Finances (Management) Act, contracts cannot be enforced against the State that have not been properly procured. However, the State has been plagued with equitable claims based on the value of works, goods or services rendered to the State or a statutory body. This allowed for bad contracts to still be paid, if work was performed. These claims are now barred and the State and statutory bodies are protected.

The State has also been plagued with claims based on the undertaking or promise of people in Government who in fact have no authority to make those promises or undertakings. These claims are now barred and the State and statutory bodies are protected. Any claim that is not based on properly authorised contracts are barred. If the proper documentation cannot be produced, courts are required to stay the claims.

Just as the previous section, the scope of this Section has been widened to given this protection to Provincial Government or Local-level Government established under the Organic Law on Provincial Governments and Local-level Government and covers the statutory bodies established by a Provincial Government or Local-level Government or their subsidiary statutory bodies.

Section 12 – Offences

This Section provides that offences under this Bill are offences of strict liability – that liability for a breach of the Bill is not contingent on proving that the offender was not at fault or negligent. This provision is similar to that in the PFMA.

The severity of the penalty for an offender found guilty will commensurate with his rank, title or designation with the public or statutory body.

The penalties for an individual convicted of an offence are: imprisonment for up to 15 years and a fine up to K2 million.

The penalties for a non-individual convicted of an offence is fine of up to K15 million.

Section 13 – Transitional Implementation

This Section provides for a sweep of all funds in bank accounts of public and statutory agencies immediately upon the Bill being enacted and coming into operation. This action can be subsequently repeated if required to ensure accounts are being operated in compliance in statutory requirements.

These swept public funds will then be separated between public money authorized by a trust instrument or by appropriation for project or operational funding shall be returned to the trust account or the operating account respectively. Other public funds shall be deposited in CRF bank account.

Prior to these public funds being transferred to the trust or operating account, these accounts will need to be established and operated in compliance with the PFMA and all relevant information is furnished to the Secretary for the Department of Finance to allow this assessment to be undertaken.

Section 14 – Termination of Operation

From the beginning of 2020 the provisions of this Bill dealing with public funds (defined by this Bill to be non-tax revenue), namely section 8(4) and 10, shall cease and all public moneys will be paid directly to CRF with public and statutory bodies receiving their funding by way of appropriations in the National Budget.