

No. 75 of 2022.

Non-Tax Revenue Administration Act 2022.

Certified on : 17 APR 2023



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No. 75 of 2022.

AN ACT

entitled

Non-Tax Revenue Administration Act 2022,

Being an Act to regularise the handling and management of non-tax revenue received by public and statutory bodies and for related purposes,

MADE by the National Parliament.

PART I. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

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

- (a) the right to liberty conferred by Section 42; and
- (b) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (c) the right to freedom of expression 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; and
- (h) the right to freedom of movement conferred by Section 52; and
- (i) the right to protection from unjust deprivation of property against compulsory acquisition of property other than on just terms, conferred by Section 53,

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

(2) For the purposes of Section 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.

(3) For the purposes of Section 53(1) (*protection from unjust deprivation of property*) of the *Constitution*, the purpose and reason for which this Act permits possession to be compulsorily taken of any property and permits any interest in or right over property to be compulsorily acquired are declared and described to be that -

- (a) such property is required for a public purpose and further for a reason that is reasonably justifiable in a democratic society that has a proper regard for the rights and dignity of mankind; and
- (b) the regularising of handling and management of public moneys (non-tax revenue) held by public and statutory bodies for the purposes of raising revenue for the National Budget is in the national interest.

2. INTERPRETATION.

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

“Consolidated Revenue Fund” has the same meaning as in the *Public Finances (Management) Act 1995*;

“drawing account” means a bank account that is held at a zero or negative balance and is replenished to zero balance on a regular basis;

“Departmental Head responsible for finance matters” has the same meaning as defined in the *Public Finances (Management) Act 1995*;

“governmental body” has the same meaning as defined in Schedule 1.2 of the *Constitution* and 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; or

“governmental purposes or official purposes” means the purpose or mandate of a governmental body as is described and defined, expressly or impliedly, in the statute or administrative act that set up the public body or the statutory body;

“lien” means a charge imposed on goods or assets to collect moneys owed to a public body or statutory body;

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

- (a) fees, liens, royalties or any other charges of any type, other than taxes; or
- (b) bonds, debentures, shares, securities, term-deposits, dividends or any other investments, including the return on those investments; or
- (c) the sale or lease of property; or
- (d) loans, donations or gifts,

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

“operating account” or “operating bank account” means a bank account that is meant to be held at a positive balance, subject to temporary overdraft facilities that may be put in place from time to time;

“property” means any real or personal property regardless of the description in the possession, power or control of a public body or statutory body, including public property in the possession, power or control of a public body or statutory body, that is or was acquired by the receipt or expenditure of -

- (a) non-tax revenue; or
- (b) funds allocated to a public or statutory body by a National Budget; or
- (c) any other funds, no matter the type or description, received or expended by a public or statutory body;

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

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“public property” means any real or personal property regardless of its description, including land, intellectual property, goods and equipment, including any interest in such property, held or controlled by a public body or a statutory body or a person acting on behalf of the State or property, held in trust for the benefit of the State by any other person;

“revenue bank account” means a bank account opened and operated by the Departmental Head responsible for finance matters for the receipt of all public funds collected by any person, public body or statutory body;

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

“statutory body” means -

- (a) a governmental body; and
- (b) a body, authority or instrumentality (corporate or unincorporated) established under an Act of Parliament for governmental or official purposes; and
- (c) a subsidiary statutory body that is not a public body, but excludes a body, authority or instrumentality (corporate or unincorporated) established by a Provincial Government or Local-level Government or their subsidiary statutory bodies that are not public bodies.

3. APPLICATION OF ACT.

(1) This Act applies -

- (a) to the State; and
- (b) to all public bodies and statutory bodies; and
- (c) notwithstanding any provision to the contrary in any other law and without regard to any exceptions, limitations, conditions in any other law, to all public and statutory bodies.

(2) This Act shall not apply -

- (a) to the Bougainville Government established under Part XIV of the *Constitution* or any public or statutory body created or established by the Bougainville Government or any public or statutory body operating exclusively within the Autonomous Region of Bougainville; and
- (b) to any statutory body which is established or serves primarily religious purposes; and
- (c) to the Kumul Consolidated Holdings established under the *Kumul Consolidated Holdings Authorisation Act 2002*; and
- (d) to the Kumul Petroleum Company established under the *Kumul Petroleum Holdings Limited Authorisation Act 2015*; and
- (e) Kumul Minerals Company established under the *Kumul Minerals Holdings Limited Authorisation Act 2015*; and
- (f) to any province, local-level government or District Development Authority established under the *District Development Authority Act 2014*.

4. NON-TAX REVENUE THE PROPERTY OF THE STATE.

(1) All non-tax revenues raised, refunded, received, held or controlled by a public body, a statutory body or a person acting on behalf of the State, including all money received as a result of -

- (a) fees, liens, royalties or any other charges of any type, other than taxes; or
- (b) bonds, debentures, shares, securities, term-deposits, dividends or any other investments including the return on those investments; or
- (c) the sale or lease of public property; or
- (d) loans, donations or gifts,

but excludes money appropriated to a public body or statutory body by or under the National Budget, are the property of the State.

(2) Nothing in Subsection (1) shall be construed as an additional acquisition of property in relation to Section 53 of the *Constitution* beyond that which prevailed under all repealed and previous Acts.

PART II. - CONTROL OF NON-TAX REVENUE.

5. FINANCING OF PUBLIC BODIES AND STATUTORY BODIES.

(1) Subject to this Act, all the operations of public bodies and statutory bodies shall be financed by -

- (a) appropriations made under the National Budget authorised for expenditure in compliance with the *Public Finances (Management) Act 1995*; or
- (b) project funds made available by donors from funding sources outside of Papua New Guinea.

(2) All non-tax revenue raised, refunded, received, held or controlled by a public body, statutory body or a person acting on behalf of the State shall, with the exception of any and all relevant bank fees owed -

- (a) be paid into the Consolidated Revenue Fund without deduction in accordance with this Act and the *Public Finances (Management) Act 1995*; and
- (b) not be used or applied in any manner to finance any of the operations of a public body or a statutory body other than in accordance with this Act and the *Public Finances (Management) Act 1995*.

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

This Act is subject to the *Public Finances (Management) Act 1995*.

7. PAYMENT OF NON-TAX REVENUE TO CONSOLIDATED REVENUE FUND.

(1) Subject to this Act, from the date of the commencement of this Act, all non-tax revenue -

- (a) held by or on behalf of any person or a public body or a statutory body; or
- (b) received by or in the custody, care or control of any person or a public body or a statutory body, whether or not non-tax revenue has been banked,

shall, at the close of the next business day following the business day on which the non-tax revenue was first held or received, transfer or deposit the non-tax revenue, without deduction of any type, with the exception of any and all relevant bank fees owed, to the revenue bank accounts specified for that person or public body or statutory body by the Departmental Head responsible for finance matters.

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

(3) A specification of bank accounts by the Departmental Head responsible for finance matters subject to Subsection (1) shall be by written notice.

8. BANK ACCOUNTS OF PUBLIC AND STATUTORY BODIES.

(1) In addition to any Trust Accounts, every public body and statutory body shall maintain, a single operating bank account, other than a drawing account.

(2) The operating bank account of a public body or a statutory body shall contain only non-tax revenue -

- (a) appropriated by the National Budget; and
- (b) transferred to a public body or a statutory body subject to Section 9.

(3) A trust account of a public body or a statutory body shall contain only -

- (a) the money appropriated to a public or statutory body by or under the National Budget and which the National Budget specifically authorises to be transferred to a trust account; and
- (b) the funds received from one or more states, or from an international organisation authorised by the trust instrument of that trust account.

(4) Subject to this Act, any non-tax revenue -

- (a) in an operating account or a trust account, other than the non-tax revenue authorised by this Act, shall be transferred to the Consolidated Revenue Fund by the Departmental Head responsible for finance matters; or
- (b) in a trust account, other than the non-tax revenue authorised by the *Public Finances (Management) Act 1995* and the trust instrument of the trust account, shall be transferred to the Consolidated Revenue Fund by the Departmental Head responsible for finance matters.

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

(6) A person or a public body or a statutory body that receives non-tax revenue shall bank the non-tax revenue money, without deduction or withholding, with the exception of any and all the relevant bank fees owed, into the relevant revenue bank account operated by the Departmental Head responsible for finance matters subject to this section.

(7) The Departmental Head responsible for finance matters shall operate and execute transactions in his own name on all bank accounts of all public bodies and statutory bodies, including trust accounts and operating accounts, irrespective of any provisions in any other law relating to the signatories of bank accounts, in order to -

- (a) access the transactional details of any bank account held by or on behalf of a public body or a statutory body; and

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- (b) transfer or cause to be transferred to the Consolidated Revenue Fund or a revenue account non-tax revenue that is required to be so transferred subject to this Act or the *Public Finances (Management) Act 1995*; and
- (c) effect any transaction permitted or required by this Act.

(8) Subject to this Act, at the date of commencement of this Act, if a person or a public body or a statutory body holds non-tax revenue in a bank account other than in accordance with this section so that non-tax revenue is in the bank account with money other than non-tax revenue, the Departmental Head responsible for finance matters shall transfer, without deduction of any type, to the revenue bank accounts of that person or public body or statutory body, all such money including the non-tax revenue held in that bank account.

(9) Subject to this Act, the Departmental Head responsible for finance matters shall transfer -

- (a) money appropriated by the National Budget to the operating bank account, if the operating bank account is not a drawing account of a public body or a statutory body; or
- (b) money appropriated by the National Budget to a trust account of a public body or a statutory body, provided that the National Budget specifically authorises that money to be transferred to a trust account; or
- (c) in respect of money other than non-tax revenue, to the public body or the statutory body from which it was transferred subject to Subsection (8),

on receipt of information that satisfies him that money other than non-tax revenue has been transferred subject to Subsection (8).

9. INTERIM ARRANGEMENTS.

(1) The Departmental Heads of -

- (a) the Department responsible for financial matters; and
- (b) the Department responsible for treasury matters,

may appoint from time to time, such other Departmental Heads to consider sectoral specific matters, and shall form the Non-Tax Revenue Administration Committee, of which the Departmental Head responsible for treasury matters shall be the chairperson.

(2) The Non-Tax Revenue Administration Committee shall determine that an amount of non-tax revenue raised by a public body or a statutory body shall be remitted to the public or statutory body to meet the reasonable operating budget requirements of a public body or a statutory body so as to justly compensate a public body or a statutory body in respect of any property affected by this Act.

(3) A determination subject to Subsection (2) shall be by notice in writing by the chairperson and shall only come into effect upon -

- (a) written approval issued by the Treasurer; and
- (b) a warrant under the *Public Finances (Management) Act 1995* issued in respect of that determination against an appropriation under the National Budget.

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

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- (a) specify its full complement of staff, including consultants for any and all projects of the public body or the statutory body, and the total of all salary, benefits, fees and any other emoluments payable to each such person on an annual basis; and
- (b) specify all recurrent outgoings and costs of the public or statutory body; and
- (c) specify the activities to be undertaken by the public or statutory body in that financial year, including an itemised costing of those activities; and
- (d) such other matters as may be required by Treasury Instructions issued pursuant to this Act.

(5) A determination under this section shall be expressed by the Non-Tax Revenue Administration Committee as a percentage of the non-tax revenue received into the revenue bank account of that public body or that statutory body, as the case may be.

(6) Subject to this section, the Departmental Head responsible for finance matters shall implement a determination under this section by transferring to a public body or a statutory body an amount equal to the percentage determined by the Non-Tax Revenue Administration Committee under this Act in compliance with the warrant issued under the *Public Finances (Management) Act 1995*.

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

(8) Subject to this Act, the Treasurer shall table in Parliament the details of all determinations approved by him.

(9) The Departmental Head responsible for treasury matters may issue Treasury Instructions, by notice published in the National Gazette, consistent with this Act or the *Public Finances (Management) Act 1995*, as to any matter relating to the conduct and control of the operations of the Non-Tax Revenue Administration Committee.

(10) All persons shall comply with the terms, conditions, requirements and instructions of Treasury Instructions issued under Subsection (9).

10. LEGAL REPRESENTATION.

(1) This section shall be interpreted so that it does not prevent, restrain or impinge a public body or a statutory body from commencing any action or other proceeding in any court or tribunal, insofar as the expenditure of public funds is concerned.

(2) A public body or a statutory body may engage or retain legal representation or procure or contract for legal representation -

- (a) in compliance with the *Attorney-General Act 1989*; and
- (b) in compliance with the *Public Finances (Management) Act 1995*; and
- (c) in compliance with the *National Procurement Act 2018*; and
- (d) in the case of litigation matters, the Solicitor General, or where non-litigious matters are involved, the State Solicitor, is of the opinion (in writing) that the lawyers proposed to be engaged are experienced, and with sufficient professional competence in the area of law to represent a public body or a statutory body.

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

PART III. - MISCELLANEOUS.

11. OFFENCES.

(1) An offence under this Act is an offence of strict liability.

(2) A person who, in whole or in part, omits or fails to pay non-tax revenue into the Consolidated Revenue Fund in compliance with this Act commits an offence.

Penalty: (a) in the case of a natural person, a fine not exceeding K2,000,000.00, or imprisonment for a period not exceeding 15 years; and
(b) in the case of a person other than a natural person, a fine not exceeding K50,000,000.00.

(3) Any employee of a public body or a statutory body or a member of the board or committee or management of a public body or a statutory body who enters into a contract for works, goods or services to be rendered to a public body or a statutory body that -

(a) has not been procured in compliance with the *National Procurement Act 2018*; and
(b) has not been authorised by the issuance of an Integrated Local Purchase Order and Claim (ILPOC) or an Authority to Pre-commit Expenditure, relating to the property or stores or works,

goods or services, the subject of the claim, to the full amount of the claim, commits an offence.

Penalty: (a) in the case of a natural person, a fine not exceeding K2,000,000.00, or imprisonment for a period not exceeding 15 years; and
(b) in the case of a person other than a natural person, a fine not exceeding K50,000,000.00.

12. TRANSITIONAL PROVISIONS.

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

(2) Subject to this section, the Departmental Head responsible for finance matters shall -

(a) return to a trust account, without deduction, the money that was authorised by the trust instrument to be contained in the trust account, including amounts appropriated by the National Budget and authorised by that National Budget to be paid into a trust account, on the condition that no non-tax revenue shall be returned to a trust account; and
(b) return to an operating account, amounts appropriated by the National Budget of financial year 2023 and the amount specified in Section 9; and
(c) pay all other funds to the Consolidated Revenue Fund.

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

- (a) the public or statutory body has an operating account or trust account, as the case may be, that is in full compliance with all of the requirements of the *Public Finances (Management) Act 1995*; and
- (b) the Departmental Head responsible for finance matters is in receipt of information produced by the public or statutory body that satisfies him that the payments are due pursuant to Subsection (2).

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

(5) Any action previously undertaken, entered into, or made prior to the coming into operation of this Act, under Acts, subordinate Acts and repealed Acts, and the former *Public Money Management Regularization Act 2017*, shall be deemed to have been taken lawfully under this Act.

13. TERMINATION OF OPERATION.

(1) Section 9 of this Act in relation to non-tax revenue collection into any other operating bank accounts of public and statutory bodies shall cease to operate on and from a date to be fixed by the Treasurer in accordance with a notice published in the National Gazette.

(2) The cessation of Section 9 does not suspend any criminal responsibility or civil liability arising from or as a result of any Acts or omissions under Section 9 of this Act.

I hereby certify that the above is a fair print of the *Non-Tax Revenue Administration Act 2022*, which has been made by the National Parliament.



Acting Clerk of the National Parliament.

17 APR 2023

I hereby certify that the *Non-Tax Revenue Administration Act 2022*, was made by the National Parliament on 2 December 2022, by an absolute majority in accordance with the *Constitution*.



Speaker of the National Parliament.

17 APR 2023

