

[Legal Notice. 74]

**PROVINCIAL GOVERNMENT ACT 1997  
(NO. 7 OF 1997)**

**THE TEMOTU DEVELOPMENT AUTHORITY (AMENDMENT)  
ORDINANCE 2008**

**AN  
ORDINANCE  
TO**

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**REFORM THE ADMINISTRATION OF THE TEMOTU  
DEVELOPMENT AUTHORITY, TO BETTER PROVIDE FOR ITS  
FUNCTIONS AND POWERS AND FOR MATTERS CONNECTED  
THEREWITH OR INCIDENTAL THERETO.**

**ARRANGEMENT OF SECTIONS**

**SECTION**

1. Short Title and commencement
2. Interpretation
3. Repeal and replacement of section 4 of Principal Ordinance
4. Repeal and replacement of section 5 of Principal Ordinance
5. Amendments to section 6 of Principal Ordinance
6. Repeal and replacement of section 7 of Principal Ordinance
7. Amendments to section 11 of Principal Ordinance
8. Amendments to section 14 of Principal Ordinance
9. Amendment to section 16 of Principal Ordinance
10. Repeal and replacement of Schedule 1 of Principal Ordinance

Short title and  
commencement

**1.** This Ordinance shall be cited as the Temotu Development Authority (Amendment) Ordinance 2008 and shall come into effect on the date on which it is assented to by the Minister of Provincial Government in accordance with Section 30(2) of the Provincial Government Act 1997.

Interpretation

**2.** (1) Except as expressly provided in this Ordinance and unless the context requires otherwise, words used in this Ordinance shall have the same meaning as defined or imported in the Temotu Development Authority Ordinance 1993 (LN 156/93) (the "Principal Ordinance").

(2) Section 2 of the Principal Ordinance is amended as follows:

- (a) the definition of "Director" is repealed and replaced by a new definition:

"Director" has a similar meaning as in the Companies Act (Cap.66), amended as required, and as used in this Ordinance means a member of the Board of Directors of the Temotu Development Authority";

- (b) a new definition for "interests register" is inserted after the existing definition of "General Manager";

"interests register" means the register maintained by the Authority to record any financial interest, direct or indirect, of a Director, General Manager, other staff member or their spouse or children, in any investments, loans, projects, business pursuits, enterprises or transactions in which the Authority is involved or has an interest or which may otherwise conflict or appear to conflict with the business of the Authority";

- (c) the existing definition of "majority" is repealed and replaced by:

"majority" means the greater number of persons entitled to vote and voting";

- (d) the existing definition of "persons" is repealed and replaced by:

"persons" includes natural persons and any public body, company or association, whether corporate or unincorporate;

Repeal and  
replacement of  
section 4 of  
Principal  
Ordinance

3. Section 4 of the Principal Ordinance is repealed and replaced by a new section 4:

- "4. (1) The principal purpose of the Authority shall be to operate as a successful business.

(2) The Authority, while at all times continuing to pursue its principal purpose, shall seek to further the economic development of the province through:

- (a) identification, development, promotion and assistance to, and/or management of sound and profitable agricultural, commercial and industrial enterprises, whether through enterprises owned or run by the Authority or its subsidiaries, joint venture or other business partners, or through enterprises owned or operated by other persons in Temotu; and

- (b) provision, maintenance or safe-guarding of sustainable employment.
- (3) The enterprises operated or participated in by the Authority from time to time may include but are not limited to:
  - (a) accommodation and tourist services, including the provincial rest house;
  - (b) fish and marine product buying and/or processing;
  - (c) timber milling and timber products;
  - (d) commodities buying and/or processing;
  - (e) production of coconut oil and other downstream products;
  - (f) wholesale and/or retail trading; and
  - (g) ancillary or support services reasonably connected with any of the Authority's other enterprises.

Provided that, if the Authority wishes to engage in an enterprise outside those described in this section, it must first advise the Executive and obtain the Executive's consent to the intended venture."

4. Section 5 of the Principal Ordinance is repealed and replaced with a new section 5. Repeal and replacement

- "5. (1) Subject to any contrary provision contained in this Ordinance but not otherwise, the Authority has all the powers of a natural person to accomplish its purposes and perform its functions and business.
- (2) In exercising its functions and powers the Authority shall have regard to the objectives and policies set forth in any Provincial Development Plan.
- (3) The Executive may, after consultation with the Authority and by order published in the Gazette, require the Authority to exercise any function or enterprises as may be specified in the Order and the Authority shall comply with the Order;

provided that where the Authority is of the opinion that carrying out the order is likely to adversely affect the Authority's profitability or otherwise detract materially from the Authority's ability to achieve its principal purpose, the Authority shall not be required to comply with the Order unless the Order makes provision for reasonable compensation to the Authority from the Province, for carrying out the function or enterprise."

Amendments to  
section 6 of  
Principal  
Ordinance

5. (1) Section 6(2) of the Principal Ordinance is repealed and replaced with a new subsection.

“(2) The General Manager, or in his absence, the Chairman of Directors shall, within 15 days of any Board meeting, provide copies of Minutes of the meeting to the Premier or the Provincial Minister allocated responsibility for Commerce or Industry, together with all monthly financial and operational reports provided to the Board since the previous Board meeting.”

(2) Section 6(6) in the Principal Ordinance is amended by inserting the word “other” after “such” and before “information”.

Repeal and  
replacement of  
section 7 of  
Principal  
Ordinance

6. Section 7 of the Principal Ordinance is repealed and replaced by a new section:

“7. (1) No Member of the Executive, Public Officer, Provincial Employee, Provincial Assembly member or Director, staff member or officer of the Authority or their spouses and children, may holding any financial interest, direct or indirect, in any investments, loans projects, business pursuits, enterprises or transactions in which the Authority is involved or has an interest, unless:

- (a) the person concerned declares the proposed interest to the General Manager or Chairman;
- (b) the proposed interest is entered in the interests register;
- (c) the Board, at a meeting held prior to the investment, loan, project, pursuit, enterprise or transaction proceeding, determines that the proposed transaction etc represents fair value and is in the best interests of the Authority; and
- (d) the approved interest is recorded in the Minutes and reported to the Executive, which may endorse the approval, seek further information from the Board and/or require that the relevant transaction be rescinded.

(2) Any interest obtained by a person listed in this Section 7 other than in accordance with section 7(1) (other than a transaction rescinded pursuant to section 7(1)(d) and any contract or severable part of a contract containing such an interest is void and of no effect; except that, at the sole discretion of the Authority, beneficial ownership of the prohibited interest may be transferred, by forfeiture without compensation, to the Authority.

(3) Directors, staff and officers of the Authority, including the General Manager, shall comply with all provisions of the Leadership Code and the Leadership Code (Further Provisions) Act 1999".

7. (1) Section 11(1) of the Principal Ordinance is amended by inserting the words: "*the obtaining of the written consent of the Provincial Executive and compliance with any conditions or limits on individual or aggregate sums guaranteed or lent, as determined by the Provincial Executive*", after the words "...provisions of this Ordinance." and before "guarantee as it sees fit..".

(2) Section 11 is further amended by inserting, after sub-section 11(3), the following new subsections:

"(4) Any purported guarantee entered into other than in compliance with this section shall be unenforceable in law or equity.

(5) The fact that TDA has entered into a contract of guarantee as guarantor shall not be taken to mean that the Provincial Executive or any other organ of the Temotu Provincial Government, other than TDA, may be liable to honour any guarantee".

8. (1) Section 14(2) of the Principal Ordinance is amended by inserting the words: "or such higher proportion as may be agreed between the Executive and the Board".

after "*prescribed in section 15 of the Ordinance.*" and before "*shall be put in a reserve fund*"

(2) Section 14(3) of the Principal Ordinance is repealed and replaced by a new subsection:

"(3) The remaining annual net profit shall be paid by way of divided into the Provincial Fund or into the reserve fund as may be determined by the Executive after consultation with the Authority."

Amendments to  
section 16 of  
Principal  
Ordinance

9. Section 16 of the Principal Ordinance is amended by repealing the words "shall be", and replacing them with "is", after the words: "16. *Every Director, officer, employee or agent of the Authority:*

Repeal and  
replacement of  
Schedule 1 of  
Principal  
Ordinance

10. Schedule 1 of the Principal Act is repealed and replaced by a new Schedule:

#### "SCHEDULE 1

##### The Directors of the Board of the Authority

1. The Authority shall consist of the following:
  - (a) five (5) voting Directors all of whom have experience in commerce, industry, agriculture, finance or administration provided that no voting Director shall hold elected office in the Provincial Assembly or Parliament, nor shall he or she be a public officer, Provincial Assembly or provincial government officer as defined in the Constitution;
  - (b) One of the voting directors shall be appointed by the Executive as Chairman of the Board. (Where the Chairman is unable to attend a Board meeting then the directors attending may nominate one of their number to chair the meeting);
  - (c) one (1) ex-officio non-voting Director, who shall be the General Manager appointed pursuant to paragraph 5 of this Schedule;
  - (d) for the purpose of obtaining advice on any particular matter, any person co-opted by the Authority as a non-voting Director for such meetings as are required and while so co-opted the persons shall be entitled to an appropriate allowance as determined by the Authority;
  - (e) The Provincial Minister responsible for Commerce or such other Provincial Minister nominated by the Premier shall be invited and may attend and speak at meetings of the Board, but may not vote.

2. (1) The voting Directors shall be appointed by the Executive by notice published in the Gazette on such terms and conditions as may be specified in their respective letters of appointment for terms of not more than three (3) years and may be re-appointed at the end of each term. No voting Director may be removed except pursuant to paragraph 4 of this Schedule.
  - (2) For the purpose of continuity of representation and regular succession, so far as is possible appointments shall be arranged so that at least one, but not more than two, directors' terms of appointment expire in each calendar year. Directors may be appointed or re-appointed for terms of less than three years to facilitate this result.
  - (3) A voting Director may at any time by written notice to the Executive resign his office.
3. (1) The Directors shall be entitled to remuneration in respect of their service to the Authority. The remuneration of the Directors shall be as set by the Executive, after receiving a recommendation from the Chairman of the Board. The remuneration may not be reviewed or increased until at least 12 months after the previous review, except in exceptional circumstances (which exceptional circumstances and any increase in remuneration resulting from them must be reported to the Assembly at its next meeting, and may be the subject of a negative resolution disapproving the exceptional review of remuneration).
  - (2) The Directors shall be entitled to reimbursement for all reasonable traveling, accommodation and other expenses properly incurred by them in attending authority meetings or in connection with the business of the Authority. Reimbursement should be at Public Service rates, as published from time to time, except where the relevant rate is manifestly inadequate, in which case the Chairman may approve reimbursement of proven actual and reasonable expenses.
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- (3) Remuneration and expenses payable under this Section 3 shall be paid out of the funds of the Authority.
- 4.
- (1) Subject to sub-paragraph (2) a voting Director, may be removed from office by the Executive only if he or she
    - (a) becomes bankrupt, or suspends payment to or enters into an arrangement with his or her creditors;
    - (b) is absent from two consecutive Authority meetings without the written permission of the Chairman;
    - (c) is certified by a medical practitioner to be of unsound mind;
    - (d) has committed any other misconduct or abuse of authority, including but not limited to persistent disregard of any regulation promulgated under Section 6 (5) of this Ordinance and/or the policies or decisions of the Authority, or any other actions adversely affecting the Authority or interfering with his or her ability to effectively perform as a Director; or
    - (e) is removed by operation of sub-section 12(3) of this Schedule 1.
  - (2) No voting Director shall be removed from office pursuant to section 4(1) (d) unless –
    - (a) a committee of three current members of the Executive has investigated the alleged basis for removal; and
    - (b) the Director concerned has been given a reasonable opportunity to explain and/or defend his or her actions before the committee; and
    - (c) the committee determines that removal of the Director is justified.
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5. (1) The Directors shall appoint a General Manager for such term as they may think fit who shall have responsibility for the day to day management of the Authority, subject to the general or specific directions of the Directors.  
  
(2) The terms, conditions and remuneration of the General Manager shall be set by the Directors with the approval of the Executive.  
  
(3) When the office of General Manager is vacant or the General Manager is not able to carry out his or her duties for any reason, the Directors may appoint an acting General Manager until the vacancy or unavailability is resolved.
6. (1) The Executive may, for a specific occasion or generally, appoint a person to act as an alternate Director during such times when the presence of a Director is excused due to illness or the Director is otherwise unable to perform the duties of his or her office.  
  
(2) During such periods of incapacity the alternate Director shall have all the rights, remuneration and powers of the Director he or she is replacing, to the exclusion of the absent Director.  
  
(3) When the Director is again able to perform the duties of office, the alternate director shall cease to act as a director (but may act again during any later period of incapacity etc of the same or any other Director, unless his or her alternate appointment has been rescinded by the Executive or has ended or expired).
7. (1) The General Manager shall be the Secretary of the Board of Directors.  
  
(2) The General Manager, as Secretary, shall be responsible for ensuring that an accurate record is kept of all meetings of the Board, and of any committee or similar meeting; and that all resolutions of the Board are duly recorded and given effect to, according to their tenor.

8. (1) Three of the voting Directors shall constitute a quorum; provided that no Board meeting may be called without the approval of the Chairman, or if the Chairman is incapacitated or is otherwise unable to act, the Premier.  
  
(2) All acts or decision of the Authority shall be determined by a majority of the votes of the voting Directors present at any meeting and in the event of an equality of votes the Chairman shall have a casting vote in addition to his or her deliberative vote.  
  
(3) The Directors shall meet at such times and places as shall be determined by the Chairman but in any case not less often than once every three months.  
  
(4) The Authority may make Standing Orders for the conduct of its business.
9. (1) In connection with the exercise of the functions of the Authority, the Directors may establish such committees as appear to them to be appropriate and necessary.  
  
(2) Any committee shall be composed of Directors, voting and non-voting, and may include any alternate director.  
  
(3) The members of a committee attending any committee meeting may be paid a meeting fee which is not more than the fee they would have received, had the meeting been a Board meeting, but shall not otherwise be entitled to any additional remuneration.
10. The validity of any proceedings of the Authority shall not be affected by any vacancy among the Directors or by any defect or irregularity in the appointment of any Director.
11. (1) The common seal of the Authority shall be kept in the custody of a person authorized by the Authority and shall be affixed to a document only in the presence of and with the authenticating.

- (a) signature of the Chairman; and
  - (b) countersignature of the General Manager
- (2) The Authority may enter into legally binding agreements, including agreements which are required to be or which are in the form of a deed by:
- (a) affixing the common seal in accordance with the method set out in subsection (1); or
  - (b) having the Chairman, or in his absence another director appointed by the Board for that purpose, and another director sign the agreement or deed, and having their signatures witnessed by the General Manager or a third director.
- (3) Nothing in this section shall prevent the Board from delegating to the General Manager power to enter into any particular agreement or class of agreement on the Board's behalf, so long as:
- (a) the delegation is the subject of a suitable Board resolution; and
  - (b) the General Manager receives a written instrument of delegation that clearly details the extent of his or her authority to contract on the Board's behalf and any conditions that must be met.
12. (1) The Executive, or in the case of the General Manager, the Chairman, shall make enquiries before appointing a person to be Director or approving a person to be General Manager to establish whether the person, their spouse or children has any financial or other interest, direct or indirect, in any investments, loans, projects, business pursuits, enterprises or transactions in which the Authority is involved, other than their duties and functions as Director or General Manager.
- (2) Where a proposed Director or General Manager notifies a relevant interest, or the Executive or Chairman is otherwise satisfied that such an interest exists,

- (a) the Executive or Board as the case may be shall meet and determine whether or not the interest is of such a nature as is likely to lead to material conflicts of interest that cannot be managed to avoid any risk of damage to the interests of the Authority, or its reputation;
  - (b) the person may only be appointed if the Executive or Board is satisfied that a potentially conflicting interest is of such a nature as can be managed to avoid any such damage;
  - (c) for any person appointed who has a relevant interest, the interest must be recorded in the interests register, and in the case of a General Manager, be reported to the Executive.
- (2) Should it be discovered at any later time that a Director or the General Manager or their spouse or children have a direct or indirect but undeclared interest in any investments, loans, projects, business pursuits, enterprises or transactions in which the Authority is involved that Director or General Manager shall be deemed to be relieved of his or her position with the Authority unless the Board and Executive are each satisfied after enquiry, and so certify, that the conflict of interest is minor in nature and unlikely to lead to any damaged to the Authority or its reputation (in which case the interest must nevertheless be recorded in the interests register)."

Passed by the Temotu Provincial Assembly this second day of April, 2008.

This printed impression has been carefully compared by me against the Ordinance passed by the Temotu Provincial Assembly and is found by me to be a true and correct copy the said Ordinance.

(Peter Richmond McRae)  
Clerk to the Temotu Provincial Assembly (Ag)

Assented to by the Honourable Minister of Provincial Government this fifteenth day of April 2008

Minister of Provincial Government

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