

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 281.

Married Women's Property.

GENERAL ANNOTATION.

ADMINISTRATION.

As at 13 February 1976 (the date of gazettal of the most comprehensive allocation of responsibilities to Ministers and Departments at about the effective date), the administration of this Chapter was not vested specifically in any Minister. It seems, therefore, that under Constitution, Section 148(2), the political responsibility for this Chapter was vested in the Prime Minister.

This Chapter does not refer to "the Minister", "the Departmental Head" or "the Department".

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Married Women's Property Act.

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 - "the insured"
 - "investment"
 - "policy of assurance".
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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 281.

Married Women's Property Act.

Being an Act relating to the capacity, property and liabilities of married women.

1. Interpretation.

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

“contract” includes the acceptance of a trust or of the office of executrix or administratrix;

“the insured” means a person effecting or entering into a policy or contract with an insurance company for the payment at his or her death of a sum of money to—

(a) his or her spouse; and

(b) his or her children,

or any of them;

“investment” includes—

(a) deposits—

(i) in a savings bank; or

(ii) in a building society or company; or

(iii) in a banking company or institution; or

(iv) in a joint-stock or other company; and

(b) annuities; and

(c) sums forming part of—

(i) any public stock or fund; or

(ii) any other stocks or funds,

that are transferable in the books of a bank, company or public officer; and

(d) shares, stocks, debentures, debenture stock or other interests of or in a corporation, company, public body (municipal, commercial or otherwise) or of or in an industrial, provident, friendly, benefit, building or loan society; and

(e) land registered under the *Real Property Act, 1913* of the former Territory of Papua (Adopted) or the *Lands Registration Act 1924* of the former Territory of New Guinea (Adopted) or—

(i) an estate or interest in any such land; or

(ii) a mortgage, encumbrance, charge or other security, right, power or easement affecting, or an estate or interest in, any such land; and

(f) lands held under any other law relating to land;

"policy of assurance" means an instrument by which the payment of moneys by or out of the funds of an insurance company on the happening of a contingency depending on the duration of human life, by way of—

- (a) life assurance; or
- (b) endowment; or
- (c) annuity,

or otherwise is assured or secured.

(2) The provisions of this Act as to the liabilities of married women extend to all liabilities by reason of a breach of trust or devastavit committed by a married woman as a trustee, executrix or administratrix either before or after her marriage.

(3) The husband of a married woman is not subject to any of the liabilities referred to in Subsection (2) unless he has acted or intermeddled in the trust or administration.

2. Capacity of married women.

A married woman is—

- (a) capable of acquiring, holding and disposing of, property; and
- (b) capable of making herself, and being made, liable in respect of a tort, contract, debt or obligation; and
- (c) capable of suing and being sued; and
- (d) subject to the law relating to insolvency and to the enforcement of judgements and orders,

as if she were not married.

3. Joint liability of husband and wife.

A husband and wife may—

- (a) acquire, hold and dispose of, property jointly or as tenants in common; and
- (b) make themselves, or be made, jointly liable in respect of a tort, contract, debt or obligation, and of suing and being sued in tort or in contract or otherwise,

as if they were not married.

4. Joint powers.

A husband and wife may exercise jointly a joint power given to them.

5. Property of married woman.

(1) Property that—

- (a) belongs to a woman at the time of her marriage; or
- (b) is acquired by or devolves on a married woman,

belongs to her in all respects as if she were not married, and may be disposed of accordingly.

(2) Subsection (1) does not interfere with or make inoperative a restriction on anticipation or alienation attached to the enjoyment of property by a married woman.

6. Investments in name of married woman.

(1) An investment that is standing in the sole name of a married woman is prima facie evidence that she is beneficially entitled to it sufficiently to—

- (a) authorize and empower her to receive, sell, mortgage, charge, transfer or otherwise deal with the investment; and
- (b) receive the dividends, rents, issues, profits and income without the concurrence of her husband; and
- (c) indemnify a person acting on or under such a receipt, sale, mortgage, charge, transfer or other dealing in respect of the investment.

(2) An investment that has been or is allotted to or placed, registered or transferred in or into or made to stand in the sole name of a married woman shall, unless the contrary is shown, be deemed to be her property in respect of which, so far as a liability may be incident, she alone is liable.

(3) This Act does not require or authorize a corporation or joint-stock company to admit a married woman to be a holder of shares or stock in the company to which a liability may be incident contrary to the provisions of a law, charter, by-law, articles of association or deed of settlement, regulating the corporation or company.

7. Investments in joint names of married woman and others.

The provisions of this Act as to investments that—

- (a) stand in the sole name of a married woman; or
- (b) are allotted to, placed, registered or transferred to or into, or made to stand in, the sole name of a married woman,

extend and apply, so far as relates to the estate, rights, title or interest of the married woman, to an investment that—

- (c) is standing in or is allotted to, placed, registered or transferred to or into; or
- (d) is made to stand in,

the name of a married woman jointly with a person other than her husband.

8. Joining of husband in transfer.

It is not necessary for the husband of a married woman, in respect of her interest, to join in the transfer of or other dealing with an investment that is standing—

- (a) in the sole name of a married woman; or
- (b) in the name of the married woman jointly with a person other than her husband.

9. Investments with money of husband.

(1) If an investment is acquired by a married woman by means of moneys of her husband, without his consent, a court may, on an application under this Act, order the investment and the dividends or income of the investment or any part of it, to be transferred and paid to the husband.

(2) This Act does not give validity, as against creditors of the husband, to—

- (a) a gift by a husband to his wife of property that, after the gift, continues to be in the order and disposition or reputed ownership of the husband; or
- (b) a deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors.

(3) Moneys referred to in Subsection (2)(b) may be followed as if this Act had not been made.

10. Policy of assurance by married woman.

A married woman may—

(a) effect a policy of assurance—

- (i) on her own life; or
- (ii) on the life of her husband; or
- (iii) on a life in which she has an insurable interest; or

(b) enter into a contract for future endowments by way of annuity or otherwise for her separate use,

and the policy or contract and all benefits of the policy or contract enure accordingly.

11. Moneys payable under policy of assurance by spouse.

(1) Subject to Subsection (2), a policy of assurance effected by a spouse on his or her own life and expressed to be for the benefit of—

- (a) his or her spouse; and
- (b) his or her children,

or any of them, creates a trust in favour of the persons named in the policy, and so long as an object of the trust remains unperformed, the moneys payable under any such policy—

- (c) do not form part of the estate of the insured; and
- (d) are not subject to his or her debts.

(2) If it is proved that a policy of assurance referred to in Subsection (1) was effected and the premiums were paid with intent to defraud the creditors of the insured, they are entitled to receive out of the moneys payable under the policy a sum equal to the premiums paid with simple interest on that sum at the rate of 6% per annum.

(3) The insured may, by the policy of assurance or by a memorandum under his or her hand—

- (a) appoint a trustee or trustees of the money payable under the policy and from time to time appoint a new trustee or new trustees; and
- (b) make provision for the appointment of a new trustee or new trustees; and
- (c) make provision for the investment of the moneys payable under the policy.

(4) In default of an appointment of a trustee under Subsection (3), immediately on the policy being effected it vests in the insured and his or her legal personal representatives in trust for the purposes of the trust referred to in Subsection (1).

(5) If at the time of the death of the insured or at any time afterwards—

- (a) there is no trustee of the trust referred to in Subsection (1); or
- (b) it is expedient to appoint a new trustee,

a trustee or a new trustee may be appointed by the National Court.

(6) The receipt—

- (a) of a trustee appointed under this section; or
- (b) in default of—
 - (i) any such appointment; or

(ii) notice of such an appointment to the insurance office,
of the legal personal representative of the insured,
is a sufficient discharge to the office for—

- (c) the sum secured by the policy; or
- (d) the value of the policy,

in whole or in part.

12. Remedies of married woman in respect of separate property.

(1) A married woman has in her own name against all persons (including her husband) the same civil remedies for the protection and security of her own property as if she were not married.

(2) For the purpose of commencing a proceeding under this section, it is sufficient for a married woman to allege the property to be her property.

13. Wife's ante-nuptial debts and liabilities.

After her marriage, a woman—

- (a) continues to be liable for—
 - (i) a debt contracted; or
 - (ii) a contract entered into; or
 - (iii) a wrong committed,

by her before her marriage, and for a sum for which she is liable as a contributory before or after she has been placed on the list of contributories under any Act relating to joint-stock companies; and

- (b) may be sued for any such debt and for any liability in damages or otherwise under any such contract or in respect of any such wrong.

14. Husband's liability for wife's torts and ante-nuptial contracts, etc.

(1) The husband of a married woman is not, by reason only of his being her husband, liable—

- (a) in respect of a tort committed by her whether before or after the marriage, or in respect of a contract entered into, or a debt or obligation incurred, by her before the marriage; or
- (b) to be sued, or made a party to a legal proceeding brought, in respect of any such tort, contract, debt or obligation.

(2) This Act does not—

- (a) make the husband liable in respect of a contract entered into, or a debt or obligation incurred, by his wife after the marriage; or
- (b) exempt him from liability in respect of a contract entered into, or a debt or obligation (not being a debt or obligation arising out of the commission of a tort) incurred, by her after the marriage,

in respect of which he would have been liable if this Act had not been passed.

15. Summary determination of questions as to property.

(1) If a dispute arises between husband and wife as to the title to or possession of any property—

(a) the husband or the wife; or

(b) a person, bank, company, public body, society or public officer in whose books any property of either spouse is standing,

may apply in a summary way to a Judge for an order declaring the title to, or the right to, the possession of the property.

(2) On an application under Subsection (1) the Judge may—

(a) make such order—

(i) with respect to the property in dispute; and

(ii) as to the costs of and consequent on the application, as he thinks proper; or

(b) direct—

(i) the application to stand over from time to time; and

(ii) such inquiry to be made touching the matters in question as he thinks proper.

(3) If either party so requires, the Judge may hear an application under this section in chambers.

(4) For the purposes of costs or otherwise in an application under this section, a person, bank, company, public body, society or public officer referred to in Subsection (1) shall be deemed to be a stakeholder only.

16. Married woman as executrix or trustee.

Where a married woman is—

(a) an executrix or administratrix, alone or jointly with a person other than her husband, of the estate of a deceased person; or

(b) a trustee, or jointly with a person, other than her husband, of any property subject to a trust,

she—

(c) has and may exercise all rights; and

(d) may execute and perform all powers and functions; and

(e) is subject to all liabilities,

as such, without her husband, as if she were not married.

17. Maintenance of children.

A married woman having separate property is subject to the same liability for the maintenance of her children as the husband is subject to for the maintenance of her children.

18. Legal representative of married woman.

For the purposes of this Act, the legal personal representative of a married woman has the same rights and liabilities and is subject to the same jurisdiction, in respect of her separate estate, as he would have and be if she were living.

19. Settlements.

(1) Subject to this section, this Act does not—

- (a) interfere with or affect a settlement or an agreement for a settlement made or to be made, whether before or after marriage, respecting the property of a married woman; or
- (b) interfere with or make inoperative a restriction against anticipation attached to the enjoyment of any property or income by a woman under a settlement, agreement for a settlement, will or other instrument.

(2) A restriction against anticipation in a settlement or an agreement for a settlement of a woman's own property to be made or entered into by herself is not valid as against debts contracted by her before marriage.

(3) A settlement or arrangement for a settlement referred to in Subsection (2) has no greater force or validity against creditors of the woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

(4) Subject to Subsection (5), a settlement or agreement for a settlement made by a husband or intended husband, whether before or after marriage, respecting the property of a woman whom he has married or intends to marry is not valid unless it is executed by her, if she is of full age, or, if she is not of full age, confirmed by her after she attains full age.

(5) If a woman referred to in Subsection (4) dies an infant, a covenant or disposition by her husband in the settlement or agreement binds or passes an interest in any of her property to which he is entitled on her death, and which he could have bound or disposed of if this Act had not been passed.

20. Costs out of property subject to restraint on anticipation.

In an action or proceeding instituted by a woman or by a next friend on her behalf, the court before which the action or proceeding is pending—

- (a) has jurisdiction to order from time to time, by judgement or order, payment of the costs of the opposite party out of any property that is subject to a restraint on anticipation; and
- (b) may enforce the payment by—
 - (i) the appointment of a receiver; and
 - (ii) the sale of the property or otherwise,as to it seems just.

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CHAPTER NO. 281.

Married Women's Property.

APPENDIX.

SOURCE OF THE MARRIED WOMEN'S PROPERTY ACT.

Part A.—Previous Legislation.

Married Women's Property Act 1953 (No. 66 of 1953).

as amended by—

Married Women's Property (Amendment) Act 1970 (No. 20 of 1970).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference ¹ .	Section, etc., in Revised Edition.	Previous Reference ¹ .
1	4	11	15
2	5	12	16
3	6	13	17(1)
4	7	14	18
5	8	15	19
6	9, 10	16	20
7	11	17	21
8	12	18	22
9	13	19	23, 24
10	14(1) ²	20	25

¹ Unless otherwise indicated, references are to the Act set out in Part A.

² For 14(2) see *Life Policies Protection Act*.

