



Department of Economic Development

Inward Investment Guideline

Guidelines for Investors (2018)

1. Overview

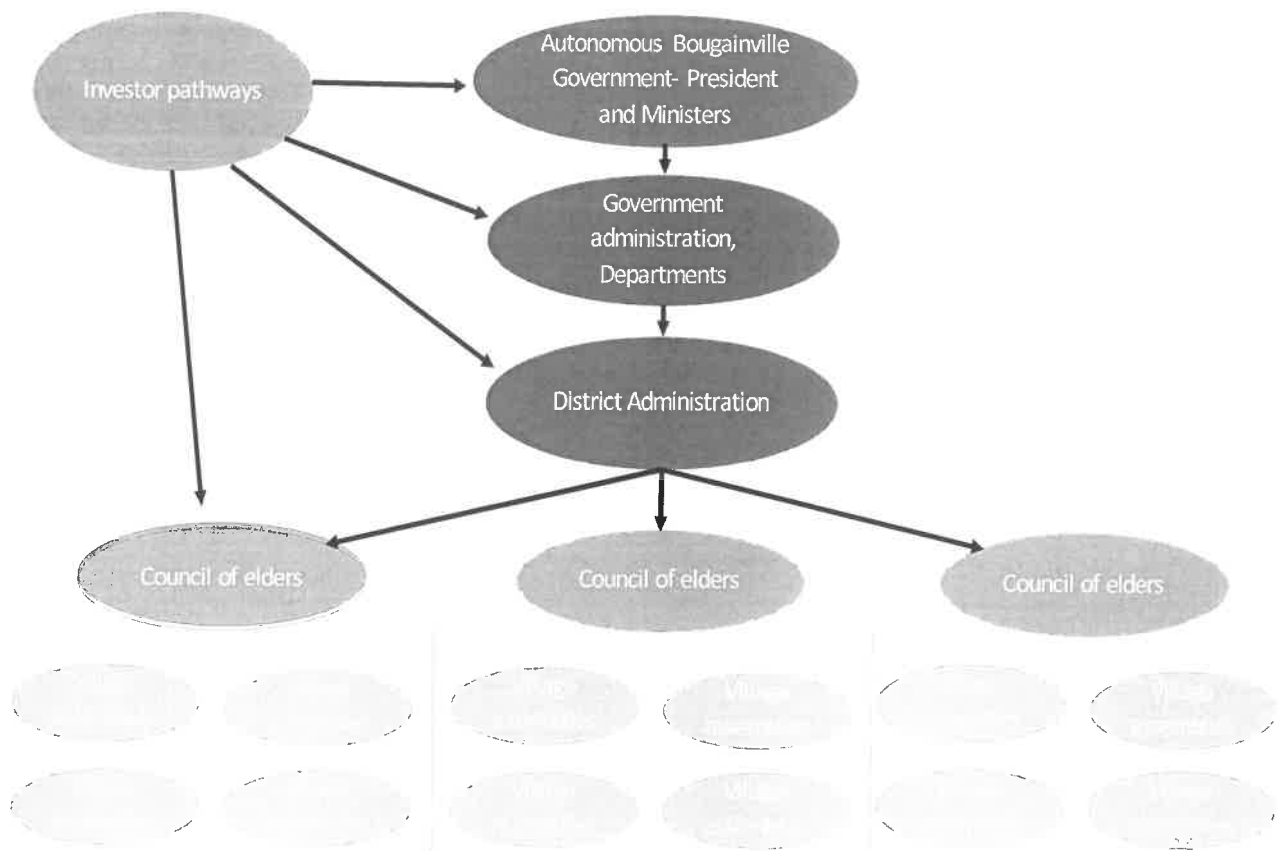
The Guidelines for Investors is designed to provide context and clarification for those parties preparing an application for investment into Bougainville. It should be used alongside:

- Form B; Investment Application, and Form A; Initial Interest
- The Inward Investment Act, the Inward Investment Amendment Act and associated Regulations

Following this introductory chapter, the guideline provides a section on background and context. In Chapter 3 impact assessment requirements are detailed, before chapter 4 details approaches to land holder engagement. Chapter 5 provides the policy guide to the inward investment framework.

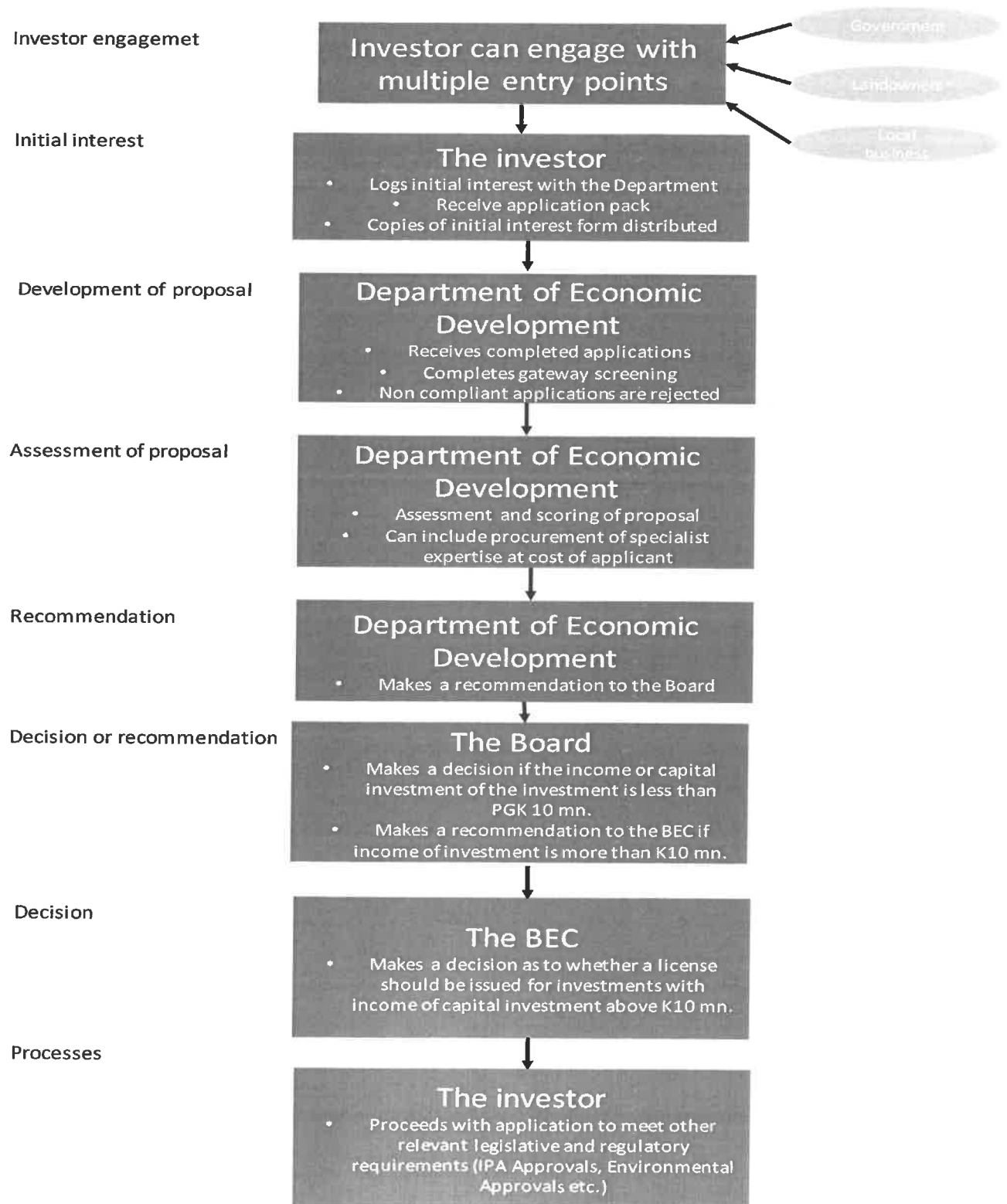
1.1 Communication Overview

The diagram below summarizes the hierarchy of Administration levels in Bougainville, and possible communication pathways a potential investor may take. Further detail on communication protocols are contained in Section 2.



1.2 Process Summary

The diagrams below are overviews of the Inward Investment Process to be managed by the Department for Economic Development, and how parties are integrated through the whole Application Process.



2. Background and Context

2.1 Overview

Bougainville has unique natural, social and cultural environments. The Autonomous Region is a land mass of around 9,300 km² and has extensive coral reefs of about 2,400 km². The exact population is unknown. The 2011 census gives an indicative population of around 270,000 people. Bougainville has around 19 different languages.

The landscape consists of two main islands, Bougainville and Buka and 166 smaller islands, including the Atolls District. Bougainville Island is the largest and has a mountainous ridgeline, the highest elevation being 2,219m with an active volcano. Surrounding the ridge are flat plains, rivers, swamps, beaches and reefs with extensive forests. Buka Island is a raised corral atoll and the highest elevation is 485m.

Several of the outlying atolls are under increasing threat from an encroaching sea which is affecting the ability to grow food and find fresh water in some areas. Resettlement programmes are underway for Atoll residents in affected areas.

Bougainville has three regions, North, Central and South and thirteen districts: Buin, Siwai, Bana, Torokina, Panguna, Kieta, Wakunai, Tinputz, Kunua, Selau Suir, Buka, Atolls, and Nissan – each of these have a District Office which service the local communities on behalf of the ABG. There are three main urban areas, Buin, Arawa and Buka. Buka is the current administrative centre for the Autonomous Bougainville Government. Difficult geography, limited infrastructure and services present barriers to communication and transportation throughout Bougainville. This has improved along the main trunk line but is still a problem for inland areas.

The majority of land (roughly 97%) is customary land, controlled by custom. Land is central to local custom and social relationships where a variety of use rights are inherited through birth, death and marriage and maintained by customary obligations. Secondary use rights can be given to outsiders through social arrangements made with the primary group. Many still maintain a subsistence lifestyle, living off the land, reefs, rivers and sea. Alienated land, mostly owned by the state is limited (roughly 3%) and is located at the urban centers and District Offices. Finding space for residential and commercial activities is difficult because all state land is allocated.

The main economic activities come from cocoa and copra. There are some large plantations but many of these are not yet as productive as they could be. Much of the exports are generated from small-holder cash crops on customary land and rehabilitating parts of abandoned plantations. Bougainvilleans mostly own and run the trade stores and eateries, and many are employed as public servants within the Government.

Bougainville has attracted a stock of inward investment. The largest concentration of inward investment can be found in utilities and banking. A number of smaller investments have been made in retail, manufacturing and agriculture. Progress is being made to attract large scale investments in the extractives sector, and this activity is regulated under Bougainvillean law.

Bougainville was once the most developed region of PNG with one of the world's largest open pit copper mines. Several factors led to local uprising that turned into a 10-year civil war. It was an incredibly complex situation but the main factors were disregard for customary land rights, erroneous distribution of royalties, significant degradation of the natural environment, influx of foreign workers and people looking for work, squatter camps and increased crime. The people brought about peace on 20th August 2001 the Bougainville Peace Agreement was signed. The Region is rebuilding, and recovering, but there is still a sense of fragility and any development involving outsiders must take the time to learn and understand Bougainville's past and current situation.

2.2 Responsible Investment Principles

Bougainville requires investment to support the growth of its economy with capital, expertise and technical support. Bougainville also needs investors who can demonstrate a commitment to the local aspirations, values and beliefs that underpin the way the economic and social development will occur.

The intent of Responsible Investment is to ensure investors can succeed while at the same time demonstrating how they, and their proposal, meet the six principles of Responsible Investment. These are to:

- **Align with local values and cultures;**
- **Be ethical, moral and fair;**
- **Recognize and protect customary land rights;**
- **Be environmentally sustainable;**
- **Maximize participation of the people; and**
- **Achieve social and cultural outcomes.**

These principles set the policy position and are built into the decision-making framework to determine applications for inward investment.

It is expected that an inward investor will ensure business dealings are transparent and robust, that the local laws including custom are respected, that landowner's rights and interests are protected and provided for, that business structures are fair, reasonable and provide reasonable returns to the people of Bougainville, and the natural environment is respected and not degraded.

Responsible investors are expected to enter the Bougainville market prepared to conduct their affairs in this manner and will be open and supportive of any level of due diligence that the ABG requires in order to make a decision.

2.3 Communicating in Bougainville

To genuinely meet the principles of Responsible Investment the applicant will need to engage with Bougainvilleans who might be directly or indirectly impacted by the project. Communicating in Bougainville can be challenging, and Bougainville culture is very diverse. One of the main factors will be identifying the right people to talk to and how best to communicate so that information is understood and the process respects cultural and social norms.

The Department of Community Government is the authority responsible for coordinating communication within the Districts. The Executive Manager of each District Office coordinates the officers and Council of Elders (COE) who then liaise with the communities in the villages and vice versa. The COE support the Council of Chiefs (COC) and landowning groups.

When identifying land and landowners please refer to the Landowner Engagement Guidelines.

The Bureau of Media and Communication is the authority responsible for enabling effective communication on behalf of the ABG throughout the Region. The Department is primarily tasked with disseminating 'impact information' on behalf of the Government.

The main modes of communication in Bougainville are face to face meetings and workshops, print media, radio, cell phone, internet, and word of mouth. Infrastructure is still being developed, coverage is not comprehensive, and faults are frequent and impacted by power cuts. Word of mouth is the most common but can give rise to misinformation and rumors. Additionally, information can be retained by a select group or individuals when it is intended for a wide audience.

The following protocol should be followed when intending to go out into the Districts to fact-find, explore or meet with people. It will be particularly important when planning and developing your investment proposal.

2.3.1 Districts Communication Protocol

1. **Optional** -Notify and/or discuss your intentions with the Community Government Officer in the Department of Community Government in Buka. This is a good place to get advice and information, including names and numbers of key people such as the Executive Manager, Community Government (CG) representatives, and Wards officers.
2. Contact the Executive Manager of the District you intend to visit. Discuss the purpose of your visit and this is an opportunity where you can seek assistance with identifying the right people and introductions, accommodation and organizing meetings.
3. The District Manager will coordinate and organize the above through their office and through the Community Government Level. Maintain good communication with the District Manager to ensure everyone knows what is happening and minimize the spread of misinformation and associated risks. Keep in contact via cell phone, the pigeonhole system at the Department of Community Government office in Buka, internet (not always an option), landline or satellite phone (DCG office in Buka).

3. Impact Assessment

This section is useful when completing Section 3 of Form B; Investment Application, particularly the proposals write up. This chapter covers general analysis of the impacts an investment activity may have on the environment and how these can be managed. **(Refer to edit Form B)**

The definition of environment includes –

- ecosystems and their constituent parts including people and communities and including human-made or modified structures and areas;
- all natural and physical resources;
- cultural values;
- unique local cultural and social systems;
- the qualities and characteristics of locations, places and areas, however large or small, that contribute to their diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community.

This section also includes specific requirements of the Environmental Act 2000 for activities listed within the Environment (Prescribed Activities) Regulation 2002.

Certain activities will require an Environmental Impact Assessment under the Environment Act, please refer to Division 3 of the Act to determine if an activity within your investment proposals meets this requirement.

3.1 General assessment and management of impacts

Assessing the impact of a potential project on the natural and physical environment as well as the social and cultural environments ensures all the impacts of a proposal, both positive and negative, are understood before an activity is allowed to happen. This means that any potentially adverse impacts are avoided or controlled; if they cannot be controlled, serious consideration should be given as to whether the activity be allowed.

The following points should be addressed:

- how the natural environment is affected – impacts on the land, air quality, soil, trees, wildlife, water bodies, sea and fish;
- how the social environment is affected – impacts on local populations, noise, shading, health and safety, way of live, ability to make a living, social interactions; and
- How the cultural environment is affected – cultural misunderstanding or potential conflict, mutual learning and benefits, new activities preventing traditional norms, and undermining or weakening custom.

An impact (or effect) is broadly defined to include positive and negative impacts, short and long term impacts, and cumulative impacts (combined with each other). Usually analysis of

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impacts includes an assessment of their likely scale and probability. A simple scaled rating could be as follows: no impact, minor impact, major or significant impact, and critical impact.

Since the purpose of an application is to demonstrate how the proposal meets the Principles of Responsible Investment as set out in the Act, it is strongly advised that the applicant considers these principles when identifying the positive and adverse impacts and how to manage them. It is also advised that the investors structure their applications as Form B is structured.

The following steps are recommended:

1. An Assessment of all impacts: actual and potential impacts (positive and negative), on the natural environment, social environment and cultural environment.
2. Where the above effects are likely to be significant, include a description of:
 - a. Available alternatives for **negative** impacts.
 - b. Potential measurable benefits at a community and national level for **positive** impacts. – *refer to note 1 below.*
3. For contaminants, an assessment of the nature of the discharge and sensitivity of the receiving environment to the adverse effects and any possible alternative methods of discharge, including discharge into any other receiving environment. – *refer to note 2 below.*
4. A description of how the negative impacts may be avoided, remedied or mitigated.
5. A description of the contingencies and conditions that need to be present for positive impacts to result in measurable benefits.
6. Where an impact needs to be controlled, a discussion of how it can be managed and whether it needs to be monitored. Where appropriate, a description of how this will be done and by whom.
7. Identification of the persons affected by the proposal, the consultation/engagement undertaken, if any, and any response to the views of any person consulted – **refer to Landowner Engagement Guidelines.**

Note 1: Benefits from positive impacts

In some cases, the physical, cultural, or social environment may be enhanced or improved as a result of actions taken during the implementation of the investment activity. If obvious, measurable benefits will be gained that provide a benefit over and above the status quo, these should be noted as such.

Note 2: Meaning of contaminant (as provided for in the Environment Act 2000)

- a) a gas, liquid, or solid;
- or b) an odour; or
- c) an organism (whether alive or dead), including a virus; or
- d) energy, including noise, heat, radioactivity and electromagnetic radiation;
- or e) a combination of contaminants,

which when released into the environment causes or is likely to cause environmental harm, and includes a hazardous and/or ozone -depleting substances, or any litter.

3.2 Requirements of Environment Act 2000

The Papua New Guinea Environment Act 2000 continues to apply in Bougainville. Section 50 of the Act states an Environmental Impact Assessment (EIA) is required for:

Level 2 activities that involve:

- o an industrial or manufacturing process which has not previously been used in PNG, or
- o is specifically the subject of obligations under any international treaty, convention or instrument to which PNG has ratified, or
- o possesses a threat of serious environmental harm, or
- o have been deemed to relate to matters of national importance.

Level 3 activities

Level 2 Activities are mostly large scale and cover a range of land and water based activities including resource extraction and development in agriculture, mining, fishing and manufacturing. The exact list is located in **Schedule 1** of the Environment (Prescribed Activities) Regulation 2002.(See **attachment**)

Level 3 Activities are deemed nationally significant and are at a greater scale than Level 2 activities. The list of level 3 activities is within **Schedule 2** of the Environment (Prescribed Activities) Regulation 2002.

If any investment or specified business activity requires an EIA the Department of Lands, Environment and Physical Planning of the ABG will manage this process. That EIA then must be provided for consideration as part of the investment licensing process. The BIIB and/or the BEC will use the EIA to consider whether the investment or specified business activity meets the Responsible Investment criteria.

4. Landowner Engagement Guidelines

The following section outlines steps that address questions around land for proposed projects in Bougainville. This is part of the assessment process for Responsible Investment and will assist with risk management for the duration of the project. Your proposal must demonstrate that you:

- Have identified and are engaging with the correct landowners (alienated and customary land);
- Can demonstrate that the intended activity is appropriate for the size of the land and local context*;

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- Have identified all the negative impacts caused by the development on the environment (natural, social and cultural) and demonstrated how these are effectively managed*; and
- Designed an appropriate land dispute resolution process to manage potential disputes

**This information should be captured in your Impact Assessment*

Further information is provided to help you understand the importance of each step, and importance of utilizing the people and processes established within Bougainville. Failure to adequately address land matters will compromise the projects assessment against the responsible investment criteria and create significant project risk.

4.1 Context

Almost all land in Bougainville (about 97%) is held under customary ownership governed by custom, ‘unwritten law’. All decisions about the use and development of customary land are made by the land owners. The remaining 3% is alienated land; roughly 2.5% is state land and 0.5% is private freehold land.

The laws and processes are different for customary land and alienated land so it is very important to know the status of the land where the intended project is located, and who the owner(s) are. This can be complicated due to several factors stemming from the Bougainville Crisis:

- Many people had to leave their land for security reasons. Some settled in the provisional care centers and on abandoned plantations and are still there today.
- The militarization of society affected the passing of traditional knowledge and respect toward traditional leaders causing confusion over customary land rights and obligations today.
- Business owners left and never returned but their leases are still allocated and the property is abandoned. Many remain vacant or have been occupied by others without a proper lease.
- Government buildings were burnt and land files and documentation were lost.
- During the Crisis rumors were spread that all alienated land had returned to the customary owners, this has caused confusion and some opportunistic behavior to occupy or receive rents unduly.

4.2 Summary: Steps, Actions and Responsibilities

Step	Title	Action	Responsibility
1	Who do I need to talk to?	Make contact with the Department Lands,	Investor

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		Environment and Physical Planning, <u>Buka</u>	
2	What is the status of the land?	Clarify the status of the Land	Department of Land, Environment and Physical Planning
3	Who owns the land?	Identify who owns the land	Department Lands, Environment and Physical Planning District Administration, Community Government
		3a Conduct initial discussions	Secretariat, Investor, District Officers, Land Owners
4	How can access be legally acquired?	Identify options for legal access	Department of Land, Environment and Physical Planning
		4a Conduct discussions	Secretariat , Department of Land, Environment and Physical Planning, Investors , Landowners & District Officer
		4b Establish access agreement and benefit sharing plan	Secretariat , Department of Land, Environment and Physical Planning, Investors , Landowners & District Officer
5	How disputes are handles?	Establish a dispute resolution plan	Department of Land , Environment and Physical Planning , Department of Law & Justice and the Investor
6	Displacement-What needs to be considered if population might have to be relocated?	Consult with the Department of Lands, Environment and Physical Planning and the Department of Community Development	Department of Lands, Environment and Physical Planning and the Department of Community Development

Supporting Documentation (by Step)

Step 3

Alienated Land:

Original title /lease, including relevant identification numbers, name(s) of the title/lease holder, records covenant or conditions, and mortgages (if any)

Customary Land:

- (a) If there is an ILG –the ILG Name, registration number, names and signature of the management Committee and directly affected families, map of land, plan indicating proportion of land for proposal
- (b) No ILG –evidence that correct landowners have been identified and support the project. Best practice is to engage the Department of Lands, Environment and Physical Planning to conduct a Customary Land Investigation , and attached