

Investing in Bougainville

“Economic prosperity for all Bougainvilleans”



About the Bougainville Inward Investment Act



Hon. Patrick Nisira
Vice President and
Minister for Commerce,
Trade & Industry

Thank you for your interest in investing in Bougainville. Our region is blessed with natural beauty, people and resources. Investing in the right business partnerships with our people to develop these resources can bring economic prosperity to all. The information in this fact sheet is designed to give both communities and private sector investors the confidence to begin this process according to new laws to help drive responsible and inclusive investment.

The Act outlines the Department of Commerce, Trade and Industry's rationale for Inward Investment in the region: we are looking to deliver the Autonomous Bougainville Government's ambition for a strong local economy which will be recognised both nationally and internationally as a good place for business investment. This will lead to job creation, higher levels of both public and private sector investment, more opportunities for young people to work in the communities, increased business resilience, greater collaboration as well as positive community engagement with the development.

Our economic strategy focus's on supporting indigenous businesses - small, medium and large - across the region, through a wide range of business support activities and large scale infrastructure projects. To sustain the growth of the local economy, it is important that we take a broader view and look at opportunities to attract new investors into Bougainville in order to realise further benefits to the economy, the existing business base, our local population and our international partners.

ABOUT THE BOARD

The Bougainville Inward Investment Board (the Board) provides oversight to the Department in relation to the inward investment framework and makes recommendations to the Bougainville Executive Council and the Minister.

Our vision

Economic prosperity for all Bougainvilleans

Our goals

- To enable Bougainville's economic prosperity through investment and trade approaches.
- To promote foreign direct investment and joint ventures.

Responsibilities

- Ensuring that proposed investment is consistent with the principles of "responsible investment"
- Giving policy advice to the Minister, and implementing any policy directives relating to inward investment
- Making other recommendations that Minister that concern sustainable economic development in Bougainville
- Making decisions on inward investment applications when the value of the investment or the income received each year is below K10 million
- Making recommendations to the Bougainville Executive Council on applications for inward investment that exceeds these thresholds.

The Board composition

- The Secretary (who is the Chair of the Board), ex officio;
- Five persons appointed by the Bougainville Executive Council by notice in the Bougainville Gazette, made on the recommendation of the Minister, at least 2 of whom must be women; and
- the Principal Legal Adviser, ex officio.

The term of each Board member is three years from the date of appointment.

ABOUT THE ACT

Introduction

The Bougainville Inward Investment (Amendment) Act 2018 establishes a framework for screening, approving and monitoring investment by external investors into Bougainville. It is an integral component of Bougainville's broader economic and social development strategy, and has been designed to contribute to the following:

- Responsible inward investment into Bougainville;
- An accountable government sector; and
- A vibrant and productive private sector.

Purpose

The purposes of this Act are to:

- enable inward investment and other specified business activities in Bougainville; and
- ensure that all inward investment and certain other specified business activities carried on, or into effect in Bougainville, are consistent with the principles of responsible investment, by—
- enshrining the principles of responsible investment; and
- establishing a process for licensing inward investment and specified business activities to ensure that they are consistent with the principles of responsible investment; and
- imposing conditions on inward investment and specified business activities to ensure that they will be carried out consistently with the principles of responsible investment; and
- monitoring inward investment and specified business activities to ensure they are being carried out consistently with the principles of responsible investment.

Definitions

'Bougainvillean' means a Bougainvillean as provided for under Section 7 of the Bougainville Constitution, but does not include:

- a) a person who is not a citizen; or
- b) a person who has become a citizen under Section 67 (Citizenship by naturalisation) of the National Constitution.

“ Our region is rich in natural beauty, people and resources.

‘Business’ means any activity which is carried on by any person, whether or not for a pecuniary profit, and involves or is intended to involve the supply of goods or services to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club.

Miscellaneous

Regulations

The Bougainville Executive Council may make Regulations for all or any matter which may be prescribed under this Act.

Prosecutions

- 1) The Principal Legal Adviser may prosecute an offence under this Act in the name of the Autonomous Bougainville Government.
- 2) An action under this Act must be commenced in the National Court.
- 3) The National Court may, in an action brought under this Act—
 - a) award costs against any party or claimant other than the Autonomous Bougainville Government, which costs may be recovered from the party or claimant as a debt; and
 - b) on application by the Principal Legal Adviser, order an external enterprise to cease the activity in the location the subject of the action until further order.
- 4) An order under Subsection (3)(b) must be subject to the condition that the Autonomous Bougainville Government is not liable for any loss of income or profit that may be incurred by the enterprise as a consequence of that order.
- 5) A fine imposed against an external enterprise as a result of an action under this Act must be paid to the Autonomous Bougainville Government and may be recovered from the external enterprise as a debt.

Offences & Penalties

- Undertaking investment or business without license (K10–100,000)
- Undertaking investment or business under reserved activity (K10–100,000)
- Failing to comply with the terms and conditions of a license (K10–100,000)
- Failing to comply with the act in other respect: Up to K25,000 (with provision for daily of K2,500 following conviction if the breach remains remedied)
- Failing to furnish information when required: K1,000 –K10,000
- Making false statement: K1m
- In addition, upon conviction a Court may also order that a license issued under the act is revoked.

Board Responsible Investment Criteria

- Transparent and robust
- Bougainville laws and local customs are respected
- Landowners rights and interest are upheld
- The natural environment is protected
- The business structure are fair and allow opportunities for Bougainvilleans to participate
- Profit to contribute to the economic development of Bougainville.

FREQUENTLY ASKED QUESTIONS

Who must apply for a License?

Any external enterprise seeking to make an inward investment or carry out a specified business activity on Bougainville.

When does the amending Act commence?

1. From the date of commencement of the amending Act, no external enterprise shall begin to undertake inward investment, or carry on a specified business activity, unless that external enterprise holds a licence.
2. Any external enterprise that has already commenced inward investment or that is carrying on a specified business activity shall make an application for a licence within six months of the date of commencement of the amending Act.

What are ‘reserved’ activities?

Licensing shall not be granted to an external enterprise to undertake a *reserved activity*, unless it is undertaken primarily for a charitable purpose:

- Agriculture, forestry and fishing, manufacturing
- Water supply, sewage, waste management and remediation activities
- Wholesale and retail trade, repair of motor vehicles and motor accommodation and food activities
- Administrative and support service activities
- Arts, entertainment and recreation.

What are the application fees?

- Form B registration fee - K5,000
- Variation license fee - K3,000

What is the criteria for granting a licence?

In considering whether to grant a licence to make an inward investment or to carry on a specified business activity, the Board:

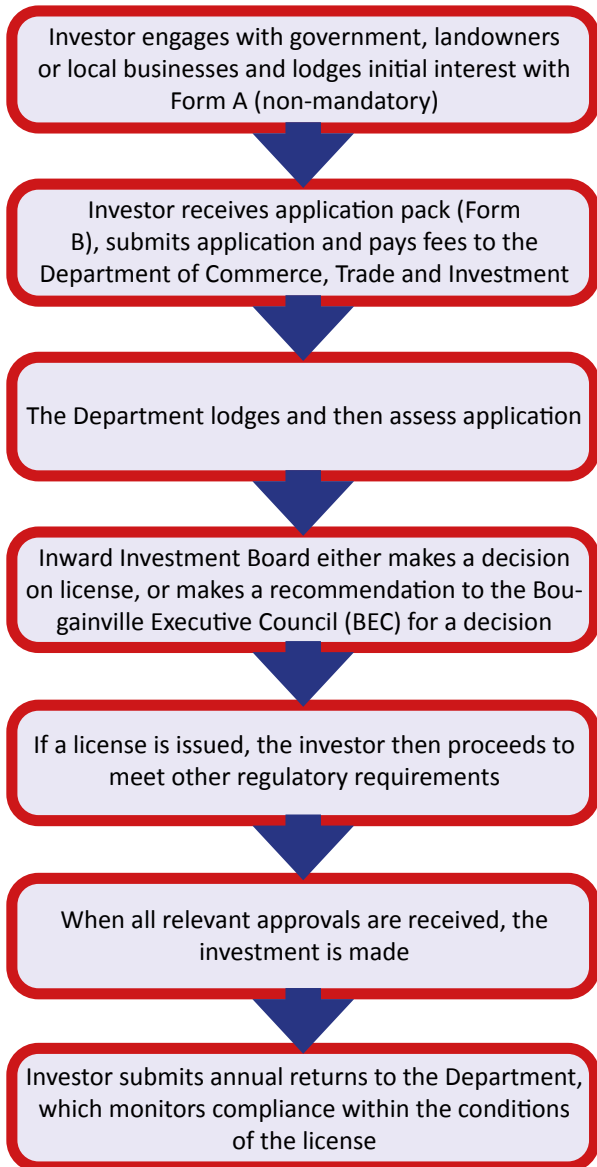
- must determine whether the requirements in section 34 are met
- may consult with any other person or persons, as they think appropriate
- must grant a licence if satisfied that the requirements in section 34 are met, and
- must decline to grant a licence if not satisfied that the requirements in section 34 are met.

Requirements for application for licence

An application for a licence under this Part must satisfy all of the following:

- be in writing
- be on a standard form made available by the Secretary from time to time
- address each of the factors outlined in section 35 and section 36
- be signed by each applicant, and any other party to the application
- be sent to the Secretary
- be accompanied by the relevant fee, unless this has already been paid.

Application and licensing process



No external enterprise shall begin to undertake inward investment on Bougainville unless that external enterprise holds a license.

- Must be registered with Investment Promotion Authority (IPA)
- Must have a Tax Identification Number from Internal Revenue Commission
- Must have current Bank Account Name under the same business name.

Any external enterprise that has already commenced inward investment in Bougainville shall make an application for a license within six months of the date of commencement. The relevant licensing authority must not grant a license to an external enterprise to undertake a re-served activity. The Bougainville Executive Council may, by notice in the Bougainville Gazette made on the recommendation of the Minister, authorize the relevant licensing authority to grant a license to an external enterprise to undertake a specified reserved activity if it is satisfied that the activity is intended to be undertaken primarily for a charitable purpose as follows:

- Advancement of education
- Advancement of religion
- Any other matter beneficial to the community.

Requirements for grant of License

The proposed inward investment or specified business activity must be consistent with the principles of responsible investment, satisfying **all** of the following:

- aligns with local values and cultures
- is ethical, moral and fair
- recognizes and protects customary land rights
- is environmentally sustainable
- maximizes participation of the local people
- achieves social and cultural outcomes.

Screening applications

1. Background checks
2. Due diligence checks
3. Applicants must satisfy the requirements of the Act and principles of responsible investment must be applied
4. Further application will be requested from the applicant if need be.

Who decides the application?

The BEC decides on applications where inward investment exceeds the investment value threshold or specified business activities where the total value of revenue expected to be generated within a 12-month period exceeds the revenue value threshold.

Decision thresholds

The following thresholds are guided by the DCTI procurement manual:

- Under K200,000 - Three quotes, DCTI Secretary approval
- Under K500,000 - Open/tender, DCTI Secretary/BIIB and Public Tenders Board Approval
- Under K10 million - Open/tender, Chief Secretary/DCTI Secretary/BIIB and Public Tenders Board Approval
- Above K10 million - Open/tender/President/BEC and Public Tenders Board Approval.

Who issues the license?

Licenses granted under section 37 will be issued by the Secretary in an appropriate form stating:

- the name of the external enterprise
- the fact that license has been granted for the inward investment or specified business activity
- the nature of the inward investment or specified business activity
- any terms or conditions applying to it
- that the license does not relieve the holder from compliance with any other laws or regulations.

Section 34: Transaction may be cancelled

Where a contract, agreement or understanding is entered into between an external enterprise and another enterprise relating to an inward investment or specified business activity that is being undertaken without a licence, that contract, agreement or understanding:

- a) is not void only because a licence has not been obtained; but
- b) may be cancelled by:
 - i. a party to the transaction who was not required to obtain a licence under this Act, by giving notice in writing to all the other parties; or
 - ii. the National Court, on the application of the Secretary.