

BOUGAINVILLE INWARD INVESTMENT (AMENDMENT) ACT 2018

Arrangement of Clauses

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Schedule 1

BOUGAINVILLE INWARD INVESTMENT (AMENDMENT) ACT 2018

Being an Act to amend the *Bougainville Inward Investment Act 2013*

MADE by the House of Representatives, to commence in accordance with Section 2

1 Short title

This Act is the *Bougainville Inward Investment (Amendment) Act 2018*

2 Commencement

This Act comes into operation on its certification under Section 66 of the Bougainville Constitution.

3 Amendment of the Bougainville Inward Investment Act

Schedule 1 amends the Bougainville Inward Investment Act 2013

Schedule 1 Amendment of *Bougainville Inward Investment Act 2013*

Section 3

[1] Amendment of Section 3

1.1 Section 3, after "In accordance"

insert

with Section

1.2 Section 3(b)

delete

180(1)j)

substitute

180(1)(j)

[2] Amendment of Section 4

2.1 Section 4(b)(iii)

delete

[3] Amendment of Section 5

3.1 Section 5, heading

delete

Intepretation

substitute

Interpretation

[4] New Section 5A

4.1 After Section 5

insert

5A Act binds Autonomous Bougainville Government

This Act binds the Autonomous Bougainville Government.

[5] Amendment of Section 6

5.1 Section 6

delete

1992

substitute

1992 of the National Parliament

[6] Amendment of Section 7

6.1 Section 7, definition of "Board"

delete, substitute

Board means the Inward Investment Board established under Section 12;

6.2 Section 7, definition of "Bougainville"

delete

6.3 Section 7, definition of "Bougainvillean"

delete, substitute

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*;

6.4 Section 7, definition of "Bureau"

delete

6.5 Section 7, definition of "Chief Executive Officer"

delete

6.6 Section 7, definition of "customary land"

delete

6.7 Section 7, definition of "human rights"

delete

United Nations International Bill of Rights

substitute

Universal Declaration of Human Rights

6.8 Section 7, definition of "inward investment", Paragraph (b)(i)

delete

terms of (a)

substitute

terms of Paragraph (a)

6.9 Section 7, definition of "Minister"

delete

6.10 Section 7, definition of "National Constitution"

delete

- 6.11 Section 7, definition of "National Court"
delete
- 6.12 Section 7, definition of "person"
delete
- 6.13 Section 7, definition of "Regulations"
delete
- 6.14 Section 7, definition of "relevant licensing body"
delete, substitute
relevant licensing body means—
- (a) for inward investment that exceeds the investment value threshold – the Bougainville Executive Council; and
 - (b) for specified business activities where the total value of revenue expected to be generated within a 12-month period exceeds the revenue value threshold – the Bougainville Executive Council; and
 - (c) for any other activity that requires a licence – the Board;
- 6.15 Section 7, definition of "statutory declaration"
insert, after "1962"
of the National Parliament
- [7] **Amendment of Section 8**
- 7.1 Section 8
renumber as Section 8(1)
- 7.2 Section 8(1)(e)
delete
unicorporated
substitute
unincorporated
- 7.3 Section 8(1)(f)
delete, substitute
- (f) a person who has been declared to be an external enterprise under Subsection (2).

7.4 Section 8, after Subsection (1)

insert

- (2) The Bougainville Executive Council may, by notice in the Bougainville Gazette made on the recommendation of the Minister, declare that a person is an external enterprise for the purposes of this Act.
- (3) The Minister must, before making a recommendation under Subsection (2), give the person a reasonable opportunity to make submissions to the Minister about the proposal to declare the person to be an external enterprise.

[8] Substitution of Part II

8.1 Part II (Sections 11 to 27)

delete, substitute

PART II – ADMINISTRATION

Sub-part I – Secretary

11 Secretary

- (1) The Secretary has the functions and powers set out in this Act.
- (2) The Secretary may, by instrument in writing, delegate to an officer of the Department a function or power under this Act.
- (3) A function or power delegated by the Secretary may not be further delegated.

Sub-part II – Inward Investment Board

12 Inward Investment Board

The Inward Investment Board is established.

13 Membership

- (1) The Board comprises—
 - (a) the Secretary (who is the Chair of the Board), *ex officio*; and
 - (b) 5 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
 - (c) the Principal Legal Adviser, *ex officio*.
- (2) A Board member appointed under Subsection (1)(b) holds office for 3 years from the date of appointment, or until the member—
 - (a) dies; or
 - (b) resigns by written notice to the Minister; or

- (c) is removed from office by the Minister for misconduct, neglect of duty, or physical or mental incapacity, after having been given a reasonable opportunity to show cause as to why the member should not be so removed from office.
- (3) If a Board member appointed under Subsection (1)(b) is unable to attend a meeting of the Board, the member may, after consultation with the Secretary, appoint a person to act as the member's alternate.
- (4) An appointment under Subsection (4)—
 - (a) must be by instrument in writing; and
 - (b) must specify a period for which it is to remain in force or the meeting or meetings to which it relates; and
 - (c) is revocable at will.

14 Validity of acts or proceedings

No act or proceeding of the Board is invalid by reason of—

- (a) a vacancy in the office of a member of the Board; or
- (b) a defect in the appointment of a member of the Board.

15 Executive Officer

- (1) The Secretary must appoint an officer of the Department to be the Executive Officer to the Board.
- (2) The Executive Officer is responsible for providing administrative support to the Board.

16 Functions

The functions of the Board are—

- (a) as provided for in this Act; and
- (b) to advise the Minister on matters—
 - (i) referred to the Board by the Minister; and
 - (ii) relevant to the economic development of Bougainville that the Board considers should be brought to the Minister's attention.

17 Procedures

- (1) Subject to this section, the Board is to determine its own procedures.
- (2) The Chair is to fix the date, time and place for a meeting of the Board.
- (3) A quorum of the Board consists of 4 members and no business may be transacted at a meeting unless a quorum is present.

- (4) A meeting of the Board is to be presided over by—
 - (a) the Chair; or
 - (b) if the Chair is absent from the meeting – a Board member chosen by those present.
- (5) At a meeting of the Board—
 - (a) a question arising for decision is to be decided by consensus if possible; and
 - (b) if consensus cannot be reached – the question is to be decided by a majority of votes cast by the Board members present, with the member presiding at the meeting having a casting vote as well as a deliberative vote.
- (6) The Executive Officer must keep full and accurate minutes of the Board's proceedings and decisions.
- (7) Board members are to be paid a sitting allowance for attending a meeting of the Board, at a rate determined by the Bougainville Executive Council.

18 Disclosure of interests

- (1) If a Board member has a personal interest in a matter being considered, or about to be considered, by the Board, the member must disclose to the other members, as soon as practicable after the relevant facts come to the member's knowledge—
 - (a) the nature and extent of the interest; and
 - (b) how the interest relates to the matter being considered, or about to be considered.
- (2) A Board member will be taken to have a personal interest in a matter if the member—
 - (a) has a direct or indirect financial interest in the matter; or
 - (b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member from exercising independent judgment about the matter.
- (3) The member need not give notice of an interest if the interest is an interest shared with the public generally or a substantial section of the public.
- (4) The disclosure must be recorded in the record of the meeting at which, or before which, the disclosure is made.
- (5) A Board member who is required to disclose an interest in a matter—
 - (a) must not take part in any deliberation or decision of the Board about the matter; and

(b) must be absent from the meeting room when any deliberation or voting on the matter is taking place.

- (6) However, a failure by a Board member to disclose an interest in a matter does not, on its own, invalidate any decision of the Board about the matter.

19 Committees

- (1) Subject to this section, the Board may establish committees to provide advice to the Board relevant to its functions.
- (2) The membership of a committee is to be determined by the Board and may include persons who are not Board members.
- (3) The Board must appoint a person as the presiding member of a committee, or make provision for the appointment of a presiding member by the committee.
- (4) The Board may remove a member from a committee, alter the membership of a committee, or remove a person as the presiding member of a committee, as it considers appropriate.
- (5) A committee may, subject to any directions of the Board, determine its own procedures.

[9] Amendment of Section 28

9.1 Section 28

delete (both references)

this Act

substitute

the amending Act

9.2 Section 28, after Subsection (2)

insert

- (3) In this section—

amending Act means the *Bougainville Inward Investment (Amendment) Act 2018*.

[10] Substitution of Section 29

10.1 Section 29

delete, substitute

29 Reserved activities

- (1) Subject to Subsection (3), the relevant licensing authority must not grant a licence to an external enterprise to undertake a reserved activity.

- (2) The Board must, at least once in any 2-year period, review the list of reserved activities and advise the Minister as to any changes that are, in the opinion of the Board, warranted.
- (3) The Bougainville Executive Council may, by notice in the Bougainville Gazette made on the recommendation of the Minister, authorise the relevant licensing authority to grant a licence 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.

- (4) For Subsection (3)—

charitable purpose includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.

[11] Amendment of Section 32

11.1 Section 32

delete (all references)

Bureau

substitute

Secretary

[12] Amendment of Section 33

12.1 Section 33

delete (all references)

Bureau

substitute

Board

12.2 Section 33(3)

delete

[13] Amendment of Section 38

13.1 Section 38

delete (both references)

Bureau

substitute

Secretary

[14] Amendment of Section 39

14.1 Section 39

delete (both references)

Bureau

substitute

Secretary

[15] Amendment of Section 40

15.1 Section 40(1)

delete (both references)

Bureau

substitute

Secretary

15.2 Section 40(2) and (3)

delete

[16] Amendment of Section 42

16.1 Section 42(b)(ii)

delete

Bureau

substitute

Secretary

[17] Amendment of Section 43

17.1 Section 43(1)

delete (both references)

Bureau

substitute

Board

[18] Amendment of Section 44

18.1 Section 44

delete (all references)

Bureau

substitute

Secretary

[19] Amendment of Section 45

19.1 Section 45(4)(a)

delete

[two years]

substitute

2 years

[20] Amendment of Section 47

20.1 Section 47(1)

delete (all references)

Bureau

substitute

Secretary

20.2 Section 47(3)

delete

The Bureau or its authorized agent

substitute

The Secretary

20.3 Section 47(8)(b)

delete

Bureau

substitute

Secretary

[21] New Part V

21.1 After Section 48

insert

PART V – MISCELLANEOUS

[22] Deletion of Section 50

22.1 Section 50

delete

[23] Substitution of Section 51

23.1 Section 51

delete, substitute

51 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.

[24] Amendment of Section 52

24.1 Section 52(1)

delete, substitute

- (1) A person who receives information in the course of performing a function or exercising a power under this Act must take all reasonable steps to protect that information from unauthorised use or disclosure.

24.2 Section 52(3)

delete

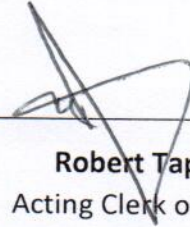
employee of the Bureau

substitute

officer of the Department

I certify that the above is a fair copy of the Bill for an Act entitled Bougainville ***Inward Investment (Amendment) Act 2018***, passed by the House of Representatives on 20 December 2018 and now presented to the Speaker for his certificate under Section 66(1) of the *Bougainville Constitution*.

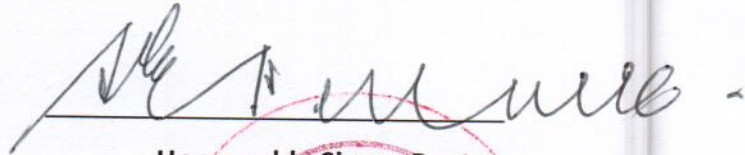
Dated 21 December 2018



Robert Tapi
Acting Clerk of the
House of Representatives

I, Simon Pentanu, Speaker of the House of Representatives, hereby certify that the ***Bougainville Inward Investment (Amendment) Act 2018*** was made by the House of Representatives on 20 December 2018.

Dated 21 December 2018



Honourable Simon Pentanu
Speaker of the House of Representatives

