

AUTONOMOUS REGION OF BOUGAINVILLE.

AN ACT

No.

Entitled

Bougainville Inward Investment Act 2013.

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PREAMBLE

WE, THE REPRESENTATIVES OF THE PEOPLE OF BOUGAINVILLE, resolve to pass this Act into law in recognition of the following principles and objectives, drawn variously from the Bougainville Peace Agreement, National Constitution, Bougainville Constitution, and the aspirations of the people of Bougainville –

- (a) the need to empower Bougainvilleans to solve their own problems, manage their own affairs and work to realise their aspirations within the framework of the Bougainville Constitution;
- (b) the need to strive to maintain a mutually acceptable balance of interests between the Autonomous Region of Bougainville and Papua New Guinea;
- (c) to advance the common objectives of equality and participation of all citizens;
- (d) to acknowledge people's right to social justice and economic development, and the interconnection between these objectives;
- (e) to promote economic development that respects and promotes cultural identity;
- (f) the need for the laws and policies of Bougainville to be directed towards the recognition of customary rights of Bougainvilleans in relation to the land, sea and natural, mineral and oil resources of Bougainville; and
- (g) the need for any investment, whether foreign or local, be undertaken responsibly.

PART I. - PRELIMINARY

1 TITLE

This Act is the Bougainville Inward Investment Act 2013.

2 COMMENCEMENT

This Act comes into force on the date of its publication in the Bougainville Gazette.

3 COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

In accordance 180 of the *Bougainville Constitution* this Act, to the extent that it regulates or restricts a right or freedom referred to in Division 2 Part 14 of the *Bougainville Constitution* (Qualifications on the qualified rights), namely–

- (a) the freedom from arbitrary search and entry by Section 180(1)(b) of the *Bougainville Constitution*; and
- (b) a right to freedom of movement conferred by section 180 (1) j) of the *Bougainville Constitution*; and
- (c) the right to freedom of assembly and association conferred by section 180(1)(e) of the *Bougainville Constitution*; and
- (d) the right to freedom of employment conferred by Section 180 (1)(f) of the *Bougainville Constitution*; and
- (e) the right to privacy conferred by Section 180(1)(g) of the *Bougainville Constitution*; and
- (f) the right to freedom of expression conferred by Section 180(1)(d) of the *Bougainville Constitution*,
- (g) protection from unjust deprivation of property conferred by section 180(1)(k) of the *Bougainville Constitution*,

is a law that is made for the purpose of giving effect to the public interest and public welfare.

4 PURPOSE

The purposes of this Act are to–

- (a) enable inward investment and other specified business activities in Bougainville; and

- (b) 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 –
- (i) enshrining the principles of responsible investment; and
 - (ii) establishing a process for licensing inward investment and specified business activities to ensure that they are consistent with the principles of responsible investment; and
 - (iii) establishing an independent statutory body, the Inward Investment Bureau, to administer the licensing process, decide certain inward investment applications, and provide analysis and advice to the Bougainville Executive Council; and
 - (iv) 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
 - (v) monitoring inward investment and specified business activities to ensure they are being carried out consistently with the principles of responsible investment.

5 INTERPRETATION

This Act shall be interpreted in a manner that best gives effect to its purposes.

6 APPLICATION OF THE INVESTMENT PROMOTION ACT 1992

The following provisions of the *Investment Promotion Act 1992* will no longer apply in Bougainville;

- (a) Section 6 (d)
- (b) Section 6 (da)
- (c) Section 25
- (d) Section 25A
- (e) Section 26
- (f) Section 27
- (g) Section 28
- (h) Section 29

- (i) Section 32
- (j) Section 33
- (k) Section 36
- (l) Section 36A
- (m) Section 36B
- (n) Section 36C
- (o) Section 36D
- (p) Section 36E
- (q) Section 36F
- (r) Section 36G
- (s) Section 40
- (t) Section 41
- (u) Section 42
- (v) Any other provision to the extent that it is inconsistent with, or, if given effect to would frustrate the purposes of, this Act.

7 DEFINITIONS

In this Act, unless the context requires otherwise—

“**associate**” has the meaning in section 9.

“**Board**” means the Board of the Bureau established under section 14.

“**Bougainville**” means the Autonomous Region of Bougainville as defined in section 1 of the Constitution of the Autonomous Region of Bougainville as adopted on 12 November 2004.

“**Bougainvillean**” has the same meaning as the *Interpretation Act 2005*.

“**Bureau**” means the Inward Investment Bureau established under section 11.

“**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.

“Chief Executive Officer” means the person appointed as such under section 24.

“customary land” until Bougainville has its own Land Act, has the meaning in the *Land Act 1996*.

“external enterprise” has the meaning in section 8.

“external person” means

- (a) an individual who is not Bougainvillean; or
- (b) a body corporate (A), whether or not incorporated in Papua New Guinea, if any person who is not Bougainvillean has—
 - (i) ownership of any of A's securities; or
 - (ii) the power to control the composition of A's governing body; or
 - (iii) the right to exercise or control the exercise of any voting power at a meeting of A; or
 - (iv) Ownership or control of A through any other means.

“human rights” means universally recognised human rights, as expressed in the United Nations International Bill of Rights.

“inward investment” includes:

- (a) the acquisition of any property, whether real or personal, which is intended to be used in the course of any business carried on wholly or partly in Bougainville (or, in the case where such intention did not exist at the time of acquisition, the continued holding of such property with such intention);
- (b) the acquisition of securities, or any other ownership interest in any external enterprise, which has undertaken, or is undertaking:
 - (i) inward investment in terms of (a); or
 - (ii) a specified business activity.

“investment value threshold” has the meaning in the Regulations.

“landowner” means-

- (a) a person who is recognized as an owner of customary land; or
- (b) a person who is in occupancy of Government land by virtue of an agreement with the State; or
- (c) a person who is the owner or lawful occupant of land other than customary land or Government

“licence” means a licence granted and issued under Part III of this Act.

“Minister” means the Minister of Commerce.

“National Constitution” means the National Constitution of Papua New Guinea.

“National Court” means the National Court of Papua New Guinea.

“person” includes bodies corporate

“principles of responsible investment” has the meaning in section 34(2).

“Regulations” means regulations issued under section 49.

“relevant licensing body” means either:

- (a) the Bureau in respect of all licence applications that do not exceed the investment value threshold or revenue value threshold; and

the Bougainville Executive Council, in respect of licence applications that exceed the investment value threshold or revenue value threshold;

“reserved activity” means a business, investment activity, or industry specified by the Regulations, which is reserved for exclusive participation by Bougainvilleans.

“revenue value threshold” has the meaning established in the Regulations.

“specified business activity” means any business carried out wholly or partly in Bougainville, whether or not it involves inward investment, that relates to the use or exploitation of the natural or physical resources of Bougainville. For the avoidance of doubt, the natural and physical resources of Bougainville include:

- (a) land; and
- (b) minerals; and
- (c) resources from within Bougainville’s territorial sea.

“statutory declaration” means a declaration under the *Oaths, Affirmations and Statutory Declarations Act 1962*.

8 WHAT IS AN EXTERNAL ENTERPRISE

External enterprise means—

- (a) an external person; or
- (b) a partnership, unincorporated joint venture, or other unincorporated body of persons (other than a trust or unit trust) (A) if—
 - (i) any of A's partners or members are external persons; or
 - (ii) an external person or persons have a beneficial interest in or entitlement to any of A's profits or assets (including on A's winding up); or
 - (iii) an external person or persons have the right to exercise or control the exercise of any voting power at a meeting of A; or
- (c) a trust (A) if—
 - (i) any of A's governing body are external persons; or
 - (ii) an external person or persons have a beneficial interest in or entitlement to A's trust property; or
 - (iii) an external person or persons have the right to amend or control the amendment of A's trust deed; or
 - (iv) an external person or persons have the right to control the composition of A's governing body; or
- (d) a unit trust (A) if—
 - (i) the manager or trustee, or both, are external persons; or
 - (ii) an external person or persons have a beneficial interest in or entitlement to any of A's trust property.
- (e) a body corporate, partnership, unincorporated joint-venture or other unincorporated body of persons, trust, or unity trust, (each an entity) if—
 - (i) an external person has an ownership or control interest by any other means in that entity; or
 - (ii) an external person has the power to control or otherwise direct the actions or activities of the entity; or

- (f) any other person that the Minister, on the recommendation of the Board by notice in the Bougainville Gazette, declares to be an external enterprise for the purposes of this Act.

9 MEANING OF ASSOCIATE

Associate means an external person who has—

- (a) ownership of shares in, or any part of, an external enterprise; or
- (b) ownership of any shares in, or any part of an enterprise which owns shares in, or owns any part of, an external enterprise; or
- (c) the power to control or otherwise direct the actions or activities of an external enterprise.

10 OWNERSHIP OR CONTROL INTEREST

For the purposes of section 8, section 9, and the definition of External Person in section 7, it is immaterial whether the relevant ownership or control interest:

- (a) is direct or indirect, express or implied, or formal or informal; or
- (b) is capable of being acquired or exercised only as a result of an agreement, arrangement, understanding or practice whether conditional or unconditional.

PART II. – THE INWARD INVESTMENT BUREAU

11 ESTABLISHMENT OF THE INWARD INVESTMENT BUREAU

- (1) The Inward Investment Bureau is established.
- (2) The Inward Investment Bureau –
 - (a) is a body corporate with perpetual succession; and
 - (b) may acquire, hold and dispose of property; and
 - (c) may sue and be sued in its corporate name and style, subject to any limitations provided by law.

12 FUNCTIONS OF THE INWARD INVESTMENT BUREAU

The functions of the Bureau are–

- (a) to ensure that all proposed inward investment and specified business activities are consistent with the principles of responsible investment; and
- (b) to provide a system of licensing of external enterprises and to require that an external enterprise may only undertake inward investment or carry on a specified business activity if it is licensed to do so; and
- (c) to monitor the activities of external enterprises and to determine whether or not they are licensed and are complying with the terms and conditions of their licences; and
- (d) to advise the Minister on policy issues which relate to this Act; and
- (e) to advise the relevant Minister or public service agency on recommendations in relation to the following:
 - (i) names to be included or removed from the National Government Visa Warning List;
 - (ii) applications by an external person for work permits and employment visas for Bougainville;
 - (iii) occupations and industries for which work permits and employment visas should not be issued for Bougainville; and
- (f) to carry out such other functions as are given to the Bureau by this Act or by any other law.

13 POWERS OF THE BUREAU

The Bureau has, in addition to the powers otherwise conferred on it by this Act and any other law, power to do all things necessary or convenient for or in connection with the performance of its functions.

14 BOARD FOR THE INWARD INVESTMENT BUREAU

- (1) The Bureau shall have a Board, as its governing body to be known as the Inward Investment Board.
- (2) The Board will perform the functions and exercise the powers of the Bureau.
- (3) All decisions relating to the operation of the Bureau must be made by or under the authority of the Board in accordance with this Act.
- (4) The Board may delegate any of the Bureau's functions or powers (other than this power of delegation, and other than the power to grant approvals under section 37) to the Chief Executive Officer and staff of the Bureau;
- (5) The Minister may, after consultation with the Board, give the Board general or specified directions as to policy to be followed from time to time provided that such policy is not inconsistent with the provisions of this Act. In the performance of its functions under this Act, the Board shall give effect to such policy

15 MEMBERSHIP OF THE BOARD

- (1) The Board shall consist of—
 - (a) the departmental head of the department responsible for matters relating to commerce, trade and industry or his or her nominee, *ex officio*; and
 - (b) the Chief Executive Officer, *ex officio*; and
 - (c) five members appointed by the Minister, two of whom shall be women.
- (2) The members referred to in sub-section (1) (c) —
 - (a) shall be appointed by the Minister with endorsement by the Bougainville Executive Council; and
 - (b) shall be appointed in accordance with a statement of skills and capabilities endorsed by the Bougainville Executive Council from time to time, and with a view to having an appropriate balance of skills and capabilities represented on the Board; and

- (c) shall be appointed for a term of up to three years; and
- (d) shall hold office on such terms and conditions as are determined by the Bougainville Executive Council; and
- (e) are eligible for re-appointment to a second term.

16 CHAIRMAN AND DEPUTY

- (1) The Bougainville Executive Council shall appoint a person to be the Chairman of the Board.
- (2) The Minister shall, on the recommendation of the members of the Board, appoint one of the members to be the Deputy Chairman of the Board.
- (3) The Chairman and Deputy Chairman hold office as Chairman or Deputy Chairman until the expiration of the period of their respective appointments or until they cease to be members, whichever first occurs.

17 LEAVE OF ABSENCE

The Minister may grant leave of absence to a member of the Board on such terms and conditions as the Minister determines.

18 VACATION OF OFFICE BY MEMBER OF THE BOARD

- (1) A member of the Board, other than an *ex officio* member, may resign his or her office by writing signed by him and delivered to the Minister.
- (2) If a member of the Board, other than an *ex officio* member—
 - (a) becomes permanently incapable of performing his or her duties; or
 - (b) resigns his or her office in accordance with sub-section (1); or
 - (c) is absent, except with the written consent of the Minister given under section 17, from three consecutive meetings of the Board; or
 - (d) fails to comply with section 21; or
 - (e) becomes bankrupt, or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (f) is convicted of an offence punishable by a term of imprisonment of one year or longer,

the Minister shall terminate his or her appointment.

- (3) The Minister, may at any time, by written notice, advise a member, other than an *ex officio* member, that he intends to terminate his or her appointment on the grounds of inefficiency or misbehaviour.
- (4) Within 14 days of the date of delivery of a notice under sub-section (3), the member may reply in writing to the Minister, who shall consider the reply, and, where appropriate, continue or terminate his or her appointment.
- (5) Where the member referred to in sub-section (3) does not reply in accordance with sub-section (4), his or her appointment is deemed terminated as of the end of 14 days from the date of delivery of the notice.

19 VACANCY NOT TO AFFECT POWERS OR FUNCTIONS

The performance of a function or the exercise of a power of the Board is not invalidated by reason only of a vacancy in the membership of the Board.

20 MEETINGS OF THE BOARD

- (1) The Board shall meet as often as the business of the Board requires, and at such times and places as the Chairman directs, but in any event not less frequently than once in every three months.
- (2) At a meeting of the Board—
 - (a) three members constitute a quorum; and
 - (b) the Chairman, or in his or her absence the Deputy Chairman, shall preside, and if both the Chairman and Deputy Chairman are absent, the members present shall appoint, from among their own number, a chairman for that meeting; and
 - (c) matters arising shall be decided by a majority of the votes of the members present and voting; and
 - (d) the person presiding has a deliberative and, in the event of an equality of votes on any matter, a casting vote.
- (3) The Board shall cause minutes of its meeting to be recorded and kept.
- (4) Subject to this Act, the procedures of the Board are as determined by the Board.

21 DISCLOSURE OF INTEREST BY MEMBER OF THE BOARD

- (1) A member of the Board who has a direct or indirect interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the Board.
- (2) A disclosure under sub-section (1), shall be recorded in the minutes of the Board, and the member—
 - (a) shall not take part, after the disclosure, in any deliberation or decision of the Board in relation to the matter; and
 - (b) shall be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision.

22 COMMITTEES OF THE BOARD

- (1) The Board may, from time to time, establish committees of the Board to advise the Board on such matters as the Board considers necessary.
- (2) In establishing a committee under sub-section (1), the Board may—
 - (a) appoint such persons as it considers necessary; and
 - (b) specify the functions and procedures of the committee.
- (3) A member of a committee who is not a member of the Board may receive fees and allowances as determined by the Board.

23 REPORTS

- (1) The Board shall furnish to the Minister—
 - (a) on or before 15 March in every year, a report on the progress and performance of the Bureau for the previous year; and
 - (b) such other reports in relation to the functions of the Bureau as are requested by the Minister.
- (2) As soon as practicable after he has received the report referred to in sub-section (1)(a), the Minister shall forward the report to the Speaker for presentation to the Parliament.

24 CHIEF EXECUTIVE OFFICER

- (1) There shall be a Chief Executive Officer of the Bureau who shall be appointed by the Bougainville Executive Council.
- (2) The Chief Executive Officer is—
 - (a) the General Manager of the Bureau; and
 - (b) the head of the staff of the Bureau; and
 - (c) responsible to the Board for the efficient carrying out of the functions of the Bureau.
- (3) The Chief Executive Officer shall be appointed for a term of four years and, on such terms and conditions as are determined by the Board and shall be eligible for reappointment.
- (4) The Chief Executive Officer may be dismissed from office by the Minister by notice in the Bougainville Gazette following a recommendation by the Board if he—
 - (a) becomes incapable of performing his or her duties; or
 - (b) engages in any paid employment or carries on business outside the duties of his or her office; or
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her salary for their benefit; or
 - (d) resigns his or her office by writing signed by him and delivered to the Minister; or
 - (e) is convicted of an offence that is punishable under a law by a term of imprisonment of one year or longer.

25 FUNCTIONS OF THE CHIEF EXECUTIVE OFFICER

- (1) The Chief Executive Officer shall—
 - (a) manage the Bureau in accordance with the policy and direction of the Board; and
 - (b) advise the Board on any matter concerning the Bureau referred to him by the Board.
- (2) The Chief Executive Officer—

- (a) shall carry out and perform the duties required of him under this Act and his or her contract of employment; and
- (b) has such other duties as the Board shall from time to time determine.
- (3) The Chief Executive Officer may, by instrument in writing, delegate all or any of his or her functions or powers (other than this power of delegation) to the staff of the Bureau and shall report any delegation under this section forthwith to the Board.

26 STAFF OF THE BUREAU

- (1) The Chief Executive Officer may appoint to be staff of the Bureau such persons as he considers necessary for the purpose of giving effect to this Act.
- (2) The Chief Executive Officer and the staff appointed under sub-section (1) constitute the staff of the Bureau.

27 CONTRACTS OF EMPLOYMENT

The Chief Executive Officer and every employee of the Bureau shall be employed under a contract of employment which, in the case of the Chief Executive Officer, shall be executed by the Board on behalf of the Bureau and by the Chief Executive Officer, and in the case of an employee, shall be executed by the Chief Executive Officer on behalf of the Bureau and by the employee concerned.

PART III. – LICENSING

SUB-PART I – LICENSING PROCESS

28 REQUIREMENT FOR LICENCE

- (1) From the date of commencement of this 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 this Act.

29 NO LICENCE FOR RESERVED ACTIVITIES

No licence shall be granted for an external enterprise to make an inward investment, or to carry on business, in a reserved activity.

30 WHO MUST APPLY FOR A LICENCE

- (1) An external enterprise seeking to make an inward investment or carry on a specified business activity must make an application for a licence under this Part.
- (2) In addition, the Board may require any other external person who is party to the inward investment or specified business activity, or any associate of a person applying for a licence, to be a party to the application.

31 APPROACH TO GRANTING A LICENCE

In considering whether or not to grant a licence to make an inward investment or to carry on a specified business activity, the relevant licensing body—

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

32 REQUIREMENTS FOR APPLICATION FOR LICENCE

- (1) An application for a licence under this Part must—
 - (a) be in writing; and
 - (b) be on a standard form made available by the Bureau from time to time; and
 - (c) address each of the factors outlined in section 35 and section 36; and
 - (d) be signed by each applicant, and any other party to the application; and
 - (e) be accompanied by a statutory declaration verifying that the information contained in the application is true and correct; and
 - (f) be sent to the Bureau; and
 - (g) be accompanied by the relevant fee, unless this has already been paid.
- (2) The statutory declaration must be made by each applicant or, if an applicant is a body corporate, by an officer of that applicant.
- (3) For the purpose of considering the application, the Bureau may, by notice in writing, require the applicant or any other person with information relevant to the application to provide the information specified in the notice and in the form specified by the notice.
- (4) Fees for an application for a licence will be prescribed by Regulations.
- (5) The Bureau may recover, in the prescribed manner, costs reasonably incurred in obtaining expert or specialist advice on any aspect of an application from an external enterprise.

33 WHO DECIDES APPLICATION

- (1) The Bougainville Executive Council will decide applications for the following:
 - (a) inward investment that exceeds the investment value threshold; or
 - (b) specified business activities, where the total value of revenue expected to be generated within a 12 month period exceeds the revenue value threshold.
- (2) Each application to be decided by the Bougainville Executive Council under sub-section (1) shall be accompanied by a recommendation of the Bureau.
- (3) The Bureau's recommendation made under section 33 (2) may include the opinion of the chief legal officer, if required by the circumstances.

- (4) The Bougainville Executive Council shall give due regard to any recommendation made by the Bureau under sub-section (2) and to the opinion (if any) given under sub-section (3).
- (5) The Minister shall be responsible for introducing all applications that fall under sub-section (1) to the Bougainville Executive Council, and shall be the liaison between the Bougainville Executive Council and the Bureau while the Bougainville Executive Council decides that application.
- (6) All applications that fall under sub-section (1) must be decided or referred back to the Bureau within 30 working days from the time the application is referred by the Bureau to the Minister.
- (7) The Bougainville Executive Council may refer an application that falls under sub-section (1) back to the Bureau for re-consideration of its recommendation if the Bougainville Executive Council considers that the recommendation is materially deficient in any respect.
- (8) In the event that the Bougainville Executive Council refers an application back the Bureau under sub-section (7), the Bureau shall notify the applicant of the likely delay in deciding the application, and shall reconsider their recommendation and refer the application to the Minister within 30 working days for re-introduction to the Bougainville Executive Council.
- (9) The Bureau will decide all applications for a licence not falling within sub-section (1).

SUB-PART II – SUBSTANTIVE REQUIREMENTS FOR GRANT OF LICENCES

34 INVESTMENT OR SPECIFIED BUSINESS ACTIVITY MUST BE RESPONSIBLE INVESTMENT

- (1) In order for a licence to be granted, the proposed inward investment or specified business activity must be consistent with the principles of responsible investment.
- (2) Responsible investment is investment which–
 - (a) aligns with local values and cultures; and
 - (b) is ethical, moral and fair; and
 - (c) recognises and protects customary land rights; and
 - (d) is environmentally sustainable; and
 - (e) maximises participation of the local people; and
 - (f) achieves social and cultural outcomes.
- (3) In determining whether or not the proposed inward investment or specified business activity is consistent with the principles of responsible investment, the relevant licensing body must–
 - (a) consider all the factors in section 35 and section 36 and determine which factor or factors (or parts of them) are relevant to the inward investment or specified business activity; and
 - (b) have regard to those relevant factors, and in doing so determine the relative importance to be given to each of them; and
 - (c) have regard to the purpose of the Act.

35 FACTORS RELEVANT TO THE APPLICANT

Factors relating to the applicant that are relevant to section 34 are whether–

- (a) the applicant has business experience and acumen relevant to the inward investment or specified business activity; and
- (b) the applicant can demonstrate a sufficient level of financial commitment and wherewithal in respect of the relevant inward investment or specified business activity; and

- (c) the applicant has been convicted of any offence in any jurisdiction; and
- (d) the applicant has been bankrupt; and
- (e) the applicant has obtained, or is eligible to obtain, an immigration status sufficient to carry out the inward investment or specified business activity.

36 FACTORS RELEVANT TO THE INWARD INVESTMENT OR SPECIFIED BUSINESS ACTIVITY

Factors relating to the inward investment or specified business activity that are relevant to section 34 are –

- (a) whether the applicant has consulted with landowners, communities and other stakeholders, so that those landowners, communities and other stakeholders:
 - (i) have had an opportunity to understand and consider what the relevant impacts of a proposed inward investment or specified business activity will be; and
 - (ii) have had an opportunity to make suggestions as to how the impacts of the proposed inward investment or specified business activity should be managed,

and that any suggestions made in accordance with sub-paragraph (ii) have been given due regard by the applicant; and
- (b) whether landowners have given free, prior, and informed consent to an inward investment or specified business activity; and
- (c) whether in consulting with landowners, communities, and other stakeholders in terms of paragraph (a), or in obtaining consent from landowners in terms of paragraph (b), the applicant can demonstrate that they have had due regard to:
 - (i) the unique customary norms, rituals or practices of the people or groups they are dealing with; and
 - (ii) the prevailing customary system of land tenure and land use rights; and
- (d) whether the impacts of population displacement have been objectively determined and are capable of being mitigated, and whether a credible plan for their mitigation and management developed, including compensation, irrespective of whether consent has been obtained in terms of paragraph (b); and

- (e) whether the likely negative environmental impacts of inward investment or specified business activity have been identified and a credible plan for their mitigation and management developed, including a plan for compliance with:
 - (i) any term or condition in any licence or consent issued by the Autonomous Bougainville Government relating to environmental impact; and
 - (ii) any legislative or regulatory obligation relating to the natural environment; and
- (f) whether the cultural impacts of the inward investment or specified business activity have been objectively determined, and whether a credible plan for their mitigation and management has been developed; and
- (g) whether the inward investment or specified business activity includes opportunity for local co-investment; and
- (h) whether the inward investment or specified business activity will create secure employment opportunities for Bougainvilleans, by way of:
 - (i) the creation of job opportunities;
 - (ii) defined pathways for advancement of employment within external enterprises;
 - (iii) transfer of skills;
 - (iv) a demonstrable preference for contracting with local vendors; and
- (i) whether the inward investment or specified business activity will result in the introduction into Bougainville of new technology, capital, or business skills; and
- (j) whether the applicant can demonstrate that any positive obligations imposed by applicable laws or regulation concerning housing, the environment, employment conditions, or any other law or regulation that has an impact on human rights, will be satisfied.

SUB-PART III – ISSUING LICENCES

37 GRANTING OR REFUSAL OF LICENCE

- (1) A licence may be —
- (a) granted in respect of a proposed inward investment, or specified business activity, in whole or in part;
 - (b) unconditional or subject to the conditions that the relevant licensing body thinks appropriate;
 - (c) granted after an inward investment or specified business activity has commenced;
 - (d) declined,
- by the relevant licensing body.
- (2) A transaction may not be cancelled under section 42(1)(b) if a licence has been granted under sub-section (1)(c).

38 ISSUE OF LICENCE

- (1) A licence granted under section 37 shall be issued by the Bureau in an appropriate form stating:
- (a) the name of the external enterprise;
 - (b) the fact that licence has been granted for the inward investment or specified business activity;
 - (c) the nature of the inward investment or specified business activity;
 - (d) any terms or conditions applying to it;
 - (e) that the licence does not relieve the holder from compliance with any other laws or regulations.
- (2) The Bureau may withhold the issue of a licence pending the recovery of costs from an external enterprise under section 32(5).

39 VARIATION OF LICENCE

- (1) The terms of a licence may be varied by the relevant licensing body with the agreement of the licence holder.

- (2) Any licence conditions may be varied or added to by the relevant licensing body with the agreement of the licence holder.
- (3) A condition of a licence may be removed by the relevant licensing body.
- (4) An external enterprise may apply to the Bureau for a variation of licence for –
 - (a) its inward investment; or
 - (b) its specified business activity; or
 - (c) any term or condition.
- (5) An application under sub-section (4) may be made by written notice to the Bureau accompanied by the fee prescribed by Regulations.
- (6) An application under sub-section (4) shall be considered as if it were a new application for a licence.

40 CONDITIONS OF LICENCE

- (1) It is a condition of every licence, whether or not it is stated in the licence, that—
 - (a) the information provided by each applicant to the Bureau in connection with the application was correct at the time it was provided; and
 - (b) each licence holder must comply with the representations and plans made or submitted in support of the application and notified by the Bureau as having been taken into account when the licence was granted, unless compliance should reasonably be excused.
- (2) For the purpose of enforcing a condition, the Bureau may enter into a contract or deed with an applicant.
- (3) No contract or deed entered into in accordance with sub-section (2) will affect the powers of the Bureau, or the rights and obligations of an external enterprise under this Act.

41 CHANGE OF OWNERSHIP OF AN EXTERNAL ENTERPRISE

- (1) Subject to sub-section (2), where there is a change in the ownership, shareholding or beneficial ownership or control of an external enterprise (other than an external enterprise that is a public company listed on a recognised stock exchange), the external enterprise's licence is deemed to be revoked, and the external enterprise must therefore make a new application for a licence pursuant to section 33.

- (2) Sub-section (1) applies only where the change in ownership, shareholding or beneficial ownership or control (“ownership”) –
- (a) is–
 - (i) not less than 10% in any one year; or
 - (ii) represents a change of not less than 25% in the ownership of the enterprise as from the date the licence was granted; and
 - (b) does not arise from an alteration in ownership of an enterprise which is a subsidiary of a holding company where the ownership of the holding company does not change and the enterprise remains a subsidiary of that holding company.

42 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 Bureau.

43 REVOCATION OF LICENCE

- (1) The Bureau may revoke a licence if in the Bureau’s opinion:
 - (a) the inward investment or specified business activity is not being carried out consistently with the principles of responsible investment; or
 - (b) the licence has been obtained by fraud.
- (2) A licensee may challenge a decision to revoke a licence under sub-section (1)(a) by filing proceedings in the National Court.
- (3) A decision to revoke a licence under sub-section (1)(a) may only be challenged on the basis that the decision:
 - (a) was not made on reasonable grounds;
 - (b) did not follow due process.

PART IV – MONITORING AND OFFENCES

44 MONITORING

- (1) Every licensee shall file an annual return of information in the standard form made available by the Bureau from time to time.
- (2) The Bureau may at any time require a licensee to provide an account of that inward investment or specified business activity on the standard form made available by the Bureau from time to time, including a statement of whether the terms and conditions imposed by the relevant licence are being met.
- (3) If at any time an external enterprise becomes aware that a term or condition of a licence has not been satisfied or cannot be satisfied they shall notify the Bureau immediately.
- (4) The Bureau may at any time enter any land, premises, or building at which an approved inward investment or specified business is carried out for the purpose of inspecting whether the terms or conditions of any licence are being met.

45 OFFENCES

- (1) An external enterprise and an officer or owner (however described) of an external enterprise which, or who—
 - (a) undertakes inward investment, or carries on a specified business activity without a licence; or
 - (b) undertakes inward investment or carries on business in a reserved activity; or
 - (c) fails to comply with the terms or conditions of a licence,is guilty of an offence.
- (2) The default penalty for an offence under sub-section (1) is
 - (a) K10,000 for a natural person; and
 - (b) K20,000 for a non-natural person.
- (3) The maximum financial penalty for an offence against sub-section (1) is K100,000.
- (4) Additional penalties that may be applied concurrently with penalties under sub-section (2) are:

- (a) imprisonment for a term not exceeding [two years]; or
 - (b) revocation of the licence of the external enterprise who committed the offence, or which the offending was committed on behalf of by an officer or owner; or
 - (c) a recommendation to the National Government of Papua New Guinea to withdraw the visa of the person convicted on an offence.
- (5) In a prosecution of an offence under this section, the burden of proof that an external enterprise—
- (a) was not carrying out an inward investment or specified business activity; or
 - (b) was lawfully carrying out an inward investment or specified business activity;

is on the person charged.

46 GENERAL PENALTY

- (1) An external enterprise which or who acts in contravention of or fails to comply in any respect with a provision of this Act is guilty of an offence under this Act.
- (2) An external enterprise which or who is guilty of an offence against this Act for which no penalty is provided elsewhere in this Act is liable to a fine not exceeding K25,000.00 for a natural person or K50,000 for a non-natural person or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment], and where the offence is a continuing one, is further liable to a fine not exceeding K2,500.00 for a natural person or K5,000 for a non-natural person for each day during which the offence is committed after conviction.

47 INFORMATION

- (1) Where, in the opinion of the Bureau any information, books or records in the possession or under the control of a person, which are relevant for the purposes of:
 - (a) monitoring compliance with the terms or conditions of a licence, or with the provisions of this Act; or
 - (b) detecting and investigating offences under this Act; or
 - (c) the exercise or performance of the powers or functions of the Bureau or to the achievement of the purposes of this Act in any other respect,

the Bureau may require that person to furnish or produce such information, books or records.

- (2) Any request for information, books, or records under sub-section (1) must be made in writing.
- (3) The Bureau or its authorized agent may take copies of and extracts from any books or records produced under sub-section (1).
- (4) Sub-section (3) does not affect the operation of any law by or under which any information, book or record is to be kept confidential.
- (5) Subject to sub-section (6), a person who—
 - (a) without reasonable excuse refuses or fails to furnish information, books, or records when requested to do so under sub-section (1); or
 - (b) furnishes information, books, or records requested under sub-section (1) that are false or misleading in a material respect—

is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 for a natural person or K20,000 for a non-natural person.

Default penalty: A fine not exceeding K1,000.00 for a natural person or K2,000 for a non-natural person.

- (6) For the purposes of sub-sections (5)(a) and (5)(b), the burden of proof is on the person charged.
- (7) It is a defence to an offence against sub-section (5) if the person charged proves—
 - (a) that the information, book, or record was not relevant to the exercise or performance of the functions or powers of the Bureau for the achievement of the purposes of this Act; or
 - (b) was not in the possession or under the control of the person at the time of receipt of the written request.
- (8) In addition to any other method of service provided under any other act, for the purposes of this Act any notice issued under this Act shall be deemed to be served on any enterprise or person if—
 - (a) served personally; or
 - (b) posted to the address of that person or enterprise as supplied to the Bureau in any standard form.

48 FALSE STATEMENTS

- (1) A person who, in a statement made or information furnished under or for the purposes of this Act, makes, without reasonable excuse, a statement, or gives information, that is false or misleading in a material particular, is guilty of an offence.
- (2) For the purposes of sub-section (1), the burden of proof is on the person charged.

Penalty: A fine not exceeding K50,000.00.

49 REGULATIONS

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

50 APPLICATION OF PUBLIC FINANCES (MANAGEMENT) ACT 1995

Part VIII of the *Public Finances (Management) Act* 1995 applies to and in relation to the Bureau.

51 PROSECUTIONS

- (1) The Bureau may prosecute any offence under this Act.
- (2) Any action commenced under this Act shall be heard by the National Court.
- (3) In any action brought under this Act by the Bureau or against the Bureau the National Court may award costs against any party or claimant other than the Bureau, which costs may be recovered by the Bureau as a debt to the Bureau.
- (4) In any action brought by the Bureau under this Act, the National Court may, on application by the Bureau, order an external enterprise to cease the activity in the location the subject of the Bureau's action until further order.
- (5) Any order made by the National Court under sub-section (4) shall be made on condition that the Bureau is not responsible for any loss of income or profit which may be incurred by the enterprise as a consequence of that order.
- (6) Any fine to be paid by an external enterprise as a result of an action brought by the Bureau shall be paid to the Bureau and, in addition to any other remedy may be recovered by the Bureau as a debt to the Bureau.

52 CONFIDENTIALITY

- (1) The Bureau shall take all reasonable steps to protect, from unauthorised use or disclosure, information given to it in confidence or in connection with the performance of its functions or the exercise of its powers.
- (2) For the purposes of sub-section (1), the disclosure of information as required by any law or court of competent jurisdiction shall be taken to be authorised use and disclosure of the information.
- (3) For the purposes of sub-section (1), the disclosure of information by a person for the purposes of performing that person's functions as an employee of the Bureau or as a member of the Board shall be taken to be authorised use and disclosure of the information.

I, EDWIN KENAHATA, Acting Clerk of the House of Representatives, hereby certify that the foregoing is a fair copy of the *Bougainville Inward Investment Act 2013* which has been made by the House of Representatives.

DATED this 18th day of November 2013.



.....
EDWIN KENAHATA,
Acting Clerk of the House of Representatives.

I, ANDREW MIRIKI, Speaker of the House of Representatives, hereby certify that the *Bougainville Inward Investment Act 2013* was made by the House of Representatives on 14th November 2013 by an absolute majority of votes in accordance with the *Bougainville Constitution*.

DATED this 18th day of November 2013.



.....
ANDREW MIRIKI,
Speaker of the House of Representatives.