

No. 8 of 1992.

***Investment Promotion Act 1992.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 8 of 1992.

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**SCHEDULE 1**



# INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

## ***Investment Promotion Act 1992,***

Being an Act to provide for the promotion of investment in the interests of national, social and economic development, and for that purpose to establish a body to be known as the Investment Promotion Authority; to define its powers and functions and to repeal certain Acts; and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with the advice of the Minister.

## **PART I. – PRELIMINARY.**

### **1. PURPOSES OF ACT.**

The purposes of this Act are–

- (a) to promote and facilitate investment in the country by citizens and foreign investors; and
- (b) to provide for the grant of a certificate to a foreign enterprise; and
- (c) to define the activities open to a foreign investor; and
- (d) to provide for a register of foreign investment opportunities; and
- (e)<sup>1</sup> to promote investments which will materially benefit the country and its people and which–
  - (i) contribute to economic growth; or
  - (ii) create employment; or
  - (iii) utilize domestic resources and, in particular, renewable resources; or

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<sup>1</sup> Section 1(e) amended by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s2(a).

- (iv) assist in skills acquisition; or
  - (v) increase the volume and value of exports; or
  - (vi) develop remote areas of the country; or
  - (vii) facilitate increased ownership of investment by citizens; or
  - (viii) promote import replacement; or
  - (ix) are likely to effect any combination of the aims specified in Subparagraphs (i) to (viii); and
- (ea)<sup>2</sup> to monitor the impact of investment and the activities of enterprises; and
- (f) to establish the Investment Promotion Authority to assist the State in achieving the purposes specified in this Section.

## 2. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this law relates to a matter of national interest.

(2) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C. of the *Constitution*, namely:–

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*,

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

## 3. INTERPRETATION.

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

<sup>3</sup>“activity” means–

- (a) an activity set out in the publication entitled *International Standard Industrial Classification of All Economic Activities (ISIC)* published by the Department of Economic and Social Affairs, Statistical Office of the United Nations, as amended from time to time; or

<sup>2</sup> Section 1(ea) inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s2(b).

<sup>3</sup> Section 3(1) (definition of “activity”) repealed and replaced by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s3(a)(i).



- (b) any activity reserved for a citizen or national enterprise under Section 27,

and includes all other antecedent and incidental business activities which are reasonably required to be conducted by an enterprise in carrying on business in that activity in respect of which it is certified to carry on business;

**“Authority”** means the Investment Promotion Authority established under Section 5;

**“Board”** means the Board established under Section 8;

**“carrying on business”** includes—

- (a)<sup>4</sup> making application for any permit, licence, lease or authority issued for commercial purposes by the State or by a State body; or
- (b) administering, renting, managing or otherwise dealing with property as an owner, agent, legal personal representative or trustee whether by a servant or agent or otherwise; or
- (c)<sup>5</sup> maintaining an agent, employee or officer for the purpose of soliciting or procuring or entering into orders, arrangements, agreements or contracts (whether conditional or not) whether or not the agent, employee or officer is continuously resident in the country; or
- (d) maintaining an office, agency or branch (however described) whether or not the office, agency or branch is also used for one of those purposes by another enterprise; or
- (e) undertaking a building, construction or assembly project or an activity numbered 8324 and 8329 in the ISIC that will not be completed within six months; or
- (f) a combination of Paragraphs (a) to (e),

but an enterprise shall not be regarded as carrying on business by reason only that it—

- (g) is or becomes a party to an action or suit or any administrative or arbitration proceeding; or
- (h) effects settlement of an action, suit or proceeding or of a claim or dispute; or
- (i) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs; or
- (j) maintains a bank account; or

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<sup>4</sup> Section 3(1) (definition of “carrying on business” paragraph(a)) amended by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s3(a)(ii)(A).

<sup>5</sup> Section 3(1) (definition of “carrying on business” paragraph(c)) amended by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s3(a)(ii)(B).

- (k) effects a sale through an independent contractor; or
- (l) by an advertisement, solicits or procures an order that becomes a binding contract only if the order is accepted outside the country; or
- (m) creates evidence of a debt or creates a charge on property; or
- (n) secures or collects any of its debts or enforces its rights in regard to any securities relating to any such debts; or
- (o) conducts an isolated transaction that is complete within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or
- (p) invests any of its funds or holds any real or personal property;

<sup>6</sup>“**certificate**” means a certificate issued under Section 29 or Section 36E;

“**Chairman**” means the Chairman appointed under Section 11;

<sup>7</sup>“**citizen**” includes the State, a State body and an enterprise wholly owned by a citizen, unless the control exercisable in law or by any agreement between the shareholders or the enterprise and a third party, or in practice, is maintained by a person other than a citizen;

“**committee**” means a committee established under Section 17;

“**corporation**” has the same meaning as in the *Companies Act* (Chapter 146);

“**enterprise**” means any person, corporation, body or association of persons engaged, or proposed to be engaged in carrying on business in an activity in the country;

<sup>8</sup>“**foreign enterprise**” means an enterprise—

- (a) which is not a national enterprise or a citizen; or
- (b) declared to be a foreign enterprise by the Minister under Section 25A;

“**foreign investment**” means investment by a non-citizen;

“**foreign investor**” means any person, corporation, body or association of persons that is not a citizen which makes or proposes to make an investment in the country;

“**investment**” means every kind of asset subject to the laws of Papua New Guinea and includes—

<sup>6</sup> Section 3(1) (definition of “certificate”) amended by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s3(a)(iii).

<sup>7</sup> Section 3(1) (definition of “citizen”) repealed and replaced by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s3(a)(iv).

<sup>8</sup> Section 3(1) (definition of “foreign enterprise”) repealed and replaced by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s3(a)(v).

- (a) moveable and immovable property and other property rights including charges, mortgages, liens and pledges; and
- (b) shares, stocks and debentures of corporations or interests in the property of such corporations; and
- (c) a chose in action, a claim to money or a claim to any performance having a financial value; and
- (d) intellectual and industrial property rights and goodwill; and
- (e) business and analogous concessions conferred by law, including concessions to search for, cultivate, extract or exploit natural resources;

**“Managing Director”** means the Managing Director of the Investment Promotion Authority appointed under Section 19 and includes the person occupying the office of Managing Director under Section 56;

<sup>9</sup>**“national enterprise”** means an enterprise more than 50% of which is owned directly or indirectly by a citizen, unless the control exercisable in law or by any agreement between the shareholders, or by agreement between the shareholders or the enterprise and a third party, or in practice, is maintained by a person other than a citizen;

**“officer”** has the same meaning as in the *Companies Act 1997*;

<sup>10</sup>**“repealed Act”** means the *National Investment and Development Act* (Chapter 120) (repealed);

**“State body”** means—

- (a) the National Government; or
- (b) a Provincial Government; or
- (c) an arm, Department, agency or instrumentality of the State or of a Provincial Government; or
- (d) any body, authority or instrumentality established by the State or by or under an Act;

**“this Act”** includes the Regulations.

(2)<sup>11</sup> <sup>12</sup>For the purposes of this Act, an enterprise shall be deemed to carry on business in the country notwithstanding that the business is carried on partly within and partly outside the country.

(3)<sup>13</sup> <sup>14</sup>For the purposes of this Act, an enterprise which carries out an activity on behalf of another enterprise pursuant to a contract, agreement or understanding

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<sup>9</sup> Section 3(1) (definition of “national enterprise”) amended by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s3(a)(vi).

<sup>10</sup> Section 3(1) (definition of “repealed Act”) inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s3(a)(vii).

<sup>11</sup> Section 3(2) amended by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s3(b).

<sup>12</sup> Section 3(2) amended by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s3(b).

shall, subject to any other Act, be deemed not to be carrying on the business of that other enterprise but to be carrying on the business of agent, manager, supplier or contractor as is appropriate.

**4. ACT BINDS THE STATE.**

(1) This Act binds the State.

(2) Where, by or under any other Act, the Head of State, acting on advice of a Minister, may give directions as to policy, any directions as to policy given to the Authority shall not be inconsistent with the provisions of this Act.

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<sup>13</sup> Section 3(3) inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s3(c).

<sup>14</sup> Section 3(3) inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s3(c).

**PART II. – THE INVESTMENT PROMOTION AUTHORITY.**

**5. ESTABLISHMENT OF THE AUTHORITY.**

(1) The Investment Promotion Authority is established.

(2) The Investment Promotion Authority–

(a) is a body corporate with perpetual succession; and

(b) shall have a common seal; and

(c) may acquire, hold and dispose of property; and

(d) may sue and be sued in its corporate name and style.

(3) All courts, Judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall presume that it was duly affixed.

**6. FUNCTIONS OF THE INVESTMENT PROMOTION AUTHORITY.**

<sup>15</sup>The functions of the Authority are, in accordance with any directions of the National Executive Council or the Minister on development objectives and policies–

(a) to provide information to investors in the country and overseas; and

(b) to encourage and facilitate investment in the country by assisting investors to obtain all necessary licences, compliances and approvals; and

(c) to facilitate the introduction of citizens and foreign investors to each other and to activities and investments of mutual benefit; and

(d) to provide a system of certification of a foreign enterprise and to require that a foreign enterprise may only carry on business if so certified; and

(da)<sup>16</sup> to monitor the activities of foreign enterprises so as to determine whether or not a foreign enterprise is certified and complies with the terms and conditions of its certificate to carry on business in the country; and

(e) to advise the Minister on policy issues which relate to this Act; and

(f) to maintain a register of foreign investment opportunities; and

(g) to facilitate citizen participation in investment and in the ownership of national and foreign enterprises; and

(h) to carry out such other functions as are given to the Authority by this Act or by any other law; and

(i) generally to do such supplementary, incidental, or consequential acts and things as are necessary or convenient for carrying out its functions.

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<sup>15</sup> Section 6 amended by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s4(a).

<sup>16</sup> Section 6(da) inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s4(b).

## 7. POWERS OF THE AUTHORITY.

(1) The Authority 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 to be done for or in connection with the performance of its functions.

(2) Where in the opinion of the Minister a State body has unduly delayed the issue or grant or consideration of a licence, compliance or approval, he may refer the matter to the Minister responsible for such State body.

(3) The Minister to whom reference is made under Subsection (2) shall provide to the Minister within 30 days of such reference a report on the reasons for the delay and the measures that are being taken or will be taken to minimize any further delay.

(4) If, following the report of the Minister under Subsection (3) there is a further delay which, in all the circumstances, the Minister considers unreasonable and unjustified he may refer the matter to the National Executive Council which shall consider the matter and give such direction as it considers shall best give effect to the purposes of this Act.

## 8. BOARD FOR THE INVESTMENT PROMOTION AUTHORITY.

(1) There is established a Board for the Investment Promotion Authority.

(2) The Board shall perform the functions, exercise the powers and manage and direct the affairs of the Authority.

(3)<sup>17</sup> <sup>18</sup>The Board shall, in the exercise of its functions under this Act, act in accordance with any general or specified directions as to the policy to be followed given to it from time to time by the Minister.

(4)<sup>19</sup> <sup>20</sup>The Minister may, after consultation with the Board, give to the Board directions as to policy and the Board shall give effect to such policy but any such direction as to policy shall not be inconsistent with the provisions of this Act.

## 9. MEMBERSHIP OF THE BOARD.

(1) The Board shall consist of—

- (a)<sup>21</sup> the Departmental Head of the Department responsible for trade and industry matters or his nominee, *ex officio*; and
- (b) the Departmental Head of the Department responsible for finance and planning matters or his nominee, *ex officio*; and
- (c) the Managing Director, *ex officio*; and

<sup>17</sup> Section 8(3) added by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s5.

<sup>18</sup> Section 8(3) added by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s5.

<sup>19</sup> Section 8(4) added by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s5.

<sup>20</sup> Section 8(4) added by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s5.

<sup>21</sup> Section 9(1)(a) repealed and replaced by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s6.

- (d) two Members nominated by the Papua New Guinea Chamber of Commerce and Industry; and
- (e) one Member nominated by the Rural Industries Council; and
- (f) one Member nominated by the Liklik Bisnismanmeri Association Incorporated; and
- (g) one Member nominated by the Papua New Guinea Chamber of Mines and Petroleum; and
- (h) two Members appointed by the Minister.

(2)<sup>22 23</sup>The Members referred to in Subsection (d) to (h)–

- (a)<sup>24</sup> shall be appointed in accordance with the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*; and
- (b) shall be appointed for a term of three years; and
- (c) hold office on such terms and conditions as are determined under the *Boards (Fees and Allowances) Act 1955*; and
- (d) are eligible for re-appointment.

(3) The nominee referred to in Subsections 1(a) and (b) shall be a person holding an office in the National Public Service not less than that of a First Assistant Secretary or the equivalent office.

(4) The persons referred to in Subsection (1)(d) to (h) shall be ordinarily resident in the country.

(5) If a body referred to in Subsection (1)(d) to (g) ceases to exist and is unable to nominate a person for membership to the Board the Minister may appoint a person in their place who shall, so far as is practicable, be representative of the interests of the group comprised by the body.

## 10. ALTERNATE MEMBERS.

(1) For each of the persons appointed under Subsection (1)(d) to (h), an alternate member shall be appointed in the same way and subject to the same conditions as the member for whom he is the alternate.

(2) In the event of the inability to act of a member, the alternate member has and may exercise all his powers, functions, duties and responsibilities and this Act applies accordingly.

(3) An alternate member may, unless the Board otherwise directs, attend all meetings of the Board but shall not, except where he is attending in the absence of the member for whom he is the alternate, take part in debate, vote on any matter or be counted towards a quorum.

<sup>22</sup> Section 9 Subsection (2) amended by No. 97 of 2006, Sched. 1.

<sup>23</sup> Section 9 Subsection (2) amended by No. 97 of 2006, Sched. 1.

<sup>24</sup> Section 9 Subsection (2) amended by No. 97 of 2006, Sched. 1.

(4) An alternate member is entitled to receive independently all notices, papers, minutes of meetings and other relevant information to which members are entitled.

#### **11. CHAIRMAN AND DEPUTY.**

(1) The Minister shall appoint one of the members 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.

#### **12. 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.

#### **13. VACATION OF OFFICE BY MEMBER OF THE BOARD.**

(1) A member of the Board, other than an *ex officio* member, may resign his 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 duties; or
- (b) resigns his office in accordance with Subsection (1); or
- (c) is absent, except with the written consent of the Minister, from three consecutive meetings of the Board; or
- (d) fails to comply with Section 16; or
- (e) becomes bankrupt, or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (f) is convicted of an offence punishable under a law by a term of imprisonment of one year or longer; or
- (g) ceases to be ordinarily resident in the country,

the Minister shall terminate his 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 appointment on the grounds of inefficiency or misbehaviour.

(4) Within 14 days of the receipt of a notice under Subsection (3), the member may reply in writing to the Minister, who shall consider the reply, and, where appropriate, terminate his appointment.



(5) Where the member referred to in Subsection (3) does not reply in accordance with Subsection (4), his appointment is terminated.

**14. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.**

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

**15. 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) five members constitute a quorum; and

(b) the Chairman, or in his 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, also 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.

**16. 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 knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under Subsection (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.

**17. 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 Subsection (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 under the *Boards (Fees and Allowances) Act 1955*.

## 18. REPORTS.

(1) The Board shall furnish to the Minister—

- (a)<sup>25</sup> on or before 15 March in every year, a report on the progress and performance of the Authority for the previous year; and
- (b) such other reports in relation to the functions of the Authority as are requested by the Minister.

(2) As soon as practicable after he has received the report referred to in Subsection (1)(a), the Minister shall forward the report to the Speaker for presentation to the Parliament.

## 19. MANAGING DIRECTOR.

(1)<sup>26</sup> <sup>27</sup>There shall be a Managing Director of the Authority whose manner of appointment, suspension and dismissal are as specified in the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*.

(2) The Managing Director is—

- (a) the chief executive officer of the Authority; and
- (b) the head of the staff of the Authority; and
- (c) responsible to the Board for the efficient carrying out of the functions of the Authority.

(3) The Managing Director shall be appointed for a term of four years and, subject to the *Salaries and Conditions Monitoring Committee Act 1988*, on such terms and conditions as are determined by the Board and shall be eligible for reappointment.

(4) The Managing Director may be dismissed from office by the Minister by notice in the National Gazette following a recommendation by the Board if he—

- (a) becomes incapable of performing his duties; or
- (b) engages in any paid employment or carries on business outside the duties of his office; or

<sup>25</sup> Section 18(1)(a) amended by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s7.

<sup>26</sup> Section 19 Subsection (1) substituted by No. 97 of 2006, Sched. 1.

<sup>27</sup> Section 19 Subsection (1) substituted by No. 97 of 2006, Sched. 1.

- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his salary for their benefit; or
- (d) resigns his 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; or
- (f) ceases to be ordinarily resident in the country.

**20. FUNCTIONS OF THE MANAGING DIRECTOR.**

(1) The Managing Director shall—

- (a) manage the Authority in accordance with the policy and direction of the Board; and
- (b) advise the Board on any matter concerning the Authority referred to him by the Board.

(2) The Managing Director—

- (a) shall carry out and perform the duties required of him under this Act and his contract of employment; and
- (b) has such other duties as the Board shall from time to time determine.

(3)<sup>28</sup> <sup>29</sup>The Managing Director may, by instrument in writing, delegate all or any of his functions or powers (other than this power of delegation) to a person and shall report any delegation under this section forthwith to the Board.

**21. STAFF OF THE AUTHORITY.**

(1) The Managing Director may appoint to be employees of the Authority such persons as he considers necessary for the purpose of giving effect to this Act.

(2) The Managing Director and the employees appointed under Subsection (1) constitute the staff of the Authority.

(3) The Managing Director shall direct the employees of the Authority.

**22. CONTRACT OF EMPLOYMENT.**

The Managing Director and every employee of the authority shall be employed under a contract of employment which, in the case of the Managing Director, shall be executed by the Board on behalf of the Authority and by the Managing Director, and in the case of an employee, shall be executed by the Managing Director on behalf of the Authority and by the employee concerned.

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<sup>28</sup> Section 20(3) added by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s8.

<sup>29</sup> Section 20(3) added by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s8.

**PART III. – FINANCES.****23. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT 1995*.**

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

**24. FUNDS OF THE AUTHORITY.**

(1) The funds of the Authority consist of–

- (a) all monies appropriated by Act for the purpose of carrying out or giving effect to this Act; and
- (b) all monies received by the Authority by way of grants and subscriptions; and
- (c) all monies received by the Authority for services provided by the Authority; and
- (d) all fees paid to the Registrar of Companies under the *Companies Act 1997*; and
- (e) all fees paid under the Acts contained in Schedule 1 to this Act; and
- (f) all other monies received by the Authority in accordance with the Act and in the exercise and performance of its powers, functions and duties.

(2) The monies of the Authority may be expended only–

- (a) in payment or discharge of expenses, obligations and liabilities of the Authority; and
- (b) in payment of the remuneration of the staff of the Authority and of allowances to the members of the Board; and
- (c) for such other purposes as are consistent with the functions of the Authority as the Board, after consultation with the Managing Director, shall determine.

**PART IV. – CERTIFICATION TO CARRY ON BUSINESS IN AN ACTIVITY.****25. CERTIFICATION.**

(1)<sup>30</sup> <sup>31</sup>The Authority may, in accordance with this Part, grant a certificate permitting a foreign enterprise to carry on business in the country.

(2)<sup>32</sup> <sup>33</sup>Subject to Section 26, a foreign enterprise shall not carry on business, unless a certificate has been granted under this Part.

(3) A certificate granted under this Act does not of itself relieve a foreign enterprise from compliance with any other law.

(4)<sup>34</sup> <sup>35</sup>A foreign enterprise which is granted a certificate under this Part shall comply with any law applying to it and such compliance is deemed to be a condition of every certificate issued under this Part.

**25A. MINISTER MAY DECLARE ENTERPRISE TO BE A FOREIGN ENTERPRISE.**

<sup>36</sup>The Minister may, on the recommendation of the Authority, by notice in the National Gazette, declare an enterprise to be a foreign enterprise for the purposes of this Act.

**26. EXEMPTION.**

<sup>37</sup>(1) Subject to Subsections (2) and (3), where, in the opinion of the Authority, the activity in which a foreign enterprise intends to engage or is engaged is intended–

- (a) primarily for religious, charitable, educational or some other socially useful purpose; or
- (b) for a non-profit purpose (other than specified in Paragraph (a)) that is socially desirable and to be encouraged; or
- (c) for a combination of any of the purposes specified in Paragraphs (a) and (b),

the Authority may, by written notice to that foreign enterprise, exempt that enterprise from any of the provisions of this Act.

(2) Before granting an exemption under Subsection (1), the Authority shall give notice in a newspaper circulating throughout the country that at the expiration

<sup>30</sup> Section 25(1) amended by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s9(a).

<sup>31</sup> Section 25(1) amended by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s9(a).

<sup>32</sup> Section 25(2) amended by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s9(b).

<sup>33</sup> Section 25(2) amended by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s9(b).

<sup>34</sup> Section 25(4) added by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s9(c).

<sup>35</sup> Section 25(4) added by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s9(c).

<sup>36</sup> Section 25A added by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s10.

<sup>37</sup> Section 26 repealed and replaced by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s11.

of 30 days from the date of publication of the notice it proposes to grant an exemption.

(3) A person may, within 10 working days of the publication of a notice referred to in Subsection (2), object to the proposed exemption by giving written notice to the Authority in the prescribed form.

(4) The Authority shall consider any objection received by it and shall thereafter determine whether or not to grant an exemption within 30 working days of the expiration of the period referred to in Subsection (3).

## **27. RESERVED ACTIVITIES.**

(1) The Regulations may prescribe activities which are reserved for—

- (a) citizens; or
- (b) national enterprises.

(2) The Authority shall, on or before the expiration of two years from the date of coming into operation of this Act and from time to time as it thinks fit, review the lists of prescribed activities under subsection (1).

(3) Following a review under Subsection (2), the Authority shall recommend to the Minister any additions or variations to, or deletions from, the lists of activities reserved under Subsection (1).

(4) Subject to Sections 26(1) and (2), a certificate shall not be granted to a foreign enterprise to carry on business in an activity reserved under Subsection (1).

(5) An enterprise which is not a citizen and which is lawfully carrying on business prior to the commencement of Regulations made under Subsection (1), may continue to carry on business in that reserved activity.

(6) If a foreign enterprise has been granted a certificate to carry on business in an activity, or an enterprise which is not a citizen is lawfully carrying on business in an activity, and that activity becomes a reserved activity under Subsection (1), the enterprise may continue to carry on business in that activity notwithstanding that the activity has become reserved and no exemption or registration granted under the *National Investment and Development Act* (Chapter 120) shall be affected by any such reservation of an activity.

## **28. APPLICATION FOR CERTIFICATION.**

(1) A foreign enterprise may apply to the Authority for a certificate under this Part.

(2)<sup>38 39</sup>An application under Subsection (1) shall—

- (a) be in the prescribed form; and

<sup>38</sup> Section 28(2) repealed and replaced by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s12(a).

<sup>39</sup> Section 28(2) repealed and replaced by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s12(a).

- (b) contain the prescribed particulars; and
- (c) be accompanied by such documents as the Authority may require; and
- (d) be accompanied by the prescribed fee.

(2A)<sup>40</sup> <sup>41</sup>Subject to Section 32, where there is an alteration in any of the circumstances supplied under Subsection (2), the enterprise shall notify the Authority in writing of the alteration within one month of the date of the alteration.

(3) In addition to the documents referred to in Subsection (2), a foreign enterprise applying under Subsection (1) shall provide to the Authority a copy of any agreement or other document relating to the management or proposed management of the foreign enterprise.

(4)<sup>42</sup> <sup>43</sup>The Authority shall, in respect of any application made under this Part—

- (a) verify to its satisfaction the correctness of any statement made or information given in the application or any supporting documents; and
- (b) review the merits of the application in order to ascertain whether the proposed activity is likely to achieve all or any of the purposes of this Act; and
- (c) review the merits of the application to verify to its satisfaction the ability of the applicant to finance, establish and operate the enterprise in the proposed activity; and
- (d) review the merits of the applicant and any other person or enterprise who is, or is proposed to be, an owner, officer, partner or is otherwise associated with the applicant.

(4A)<sup>44</sup> <sup>45</sup>Subject to Subsection (7), the Authority shall, following verification of information contained in an application under Subsection (2) and review of the merits of the application and the applicant under Subsection (4), grant the application on such terms and conditions it considers appropriate unless—

- (a) in the opinion of the Authority, the application is incorrect, misleading or does not otherwise comply with the Act; or
- (b) in the opinion of the Authority the proposed activity applied for is unlikely to achieve all or any of the purposes of this Act; or
- (c) in the opinion of the Authority, the applicant does not possess the ability to finance, establish, operate or otherwise carry out the activity applied for; or

<sup>40</sup> Section 28(2A) inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s12(b).

<sup>41</sup> Section 28(2A) inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s12(b).

<sup>42</sup> Section 28(4) repealed and replaced by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s12(c).

<sup>43</sup> Section 28(4) repealed and replaced by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s12(c).

<sup>44</sup> Section 28(4A) inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s12(d).

<sup>45</sup> Section 28(4A) inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s12(d).

- (d) the applicant and any enterprise who is, or is proposed to be, an owner, officer or partner of the applicant or is otherwise associated with the applicant has—
- (i) a civil judgement registered against him or it in the country or elsewhere and such judgement is proper and remains unsatisfied; or
  - (ii) been convicted of any offence punishable by a term of imprisonment of one year or longer or a fine of K10,000.00 or equivalent whether in the country or elsewhere; or
  - (iii) been adjudicated bankrupt or insolvent or has been wound-up or has had a receiver or a receiver and manager appointed within the ten years prior to making the application.

(4B)<sup>46</sup> <sup>47</sup>In this Part and in Part VII, unless the contrary intention appears, a person is deemed to be an owner of an enterprise, if that person has—

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

(4C) For the purposes of this section, it is immaterial whether ownership or control—

- (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.

(5)<sup>48</sup> <sup>49</sup>Written notice of the grant or refusal of an application shall be given to the applicant within 35 working days of the making of a complete and correct application.

(6) Where an application is refused, or a certificate is granted in terms other than those applied for, the notice under Subsection (5) shall state the grounds of the refusal to grant the certificate or of the grant in terms other than those applied for.

(7)<sup>50</sup> <sup>51</sup>Subject to Subsections (8) and (9) and prior to the issue of a certificate under this Part, the Authority may require an applicant for certification to deposit in a bank in the country in Papua New Guinea currency the prescribed amount.

<sup>46</sup> Section 28(4B) inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s12(e); Section 28(4C) inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s12(f).

<sup>47</sup> Section 28(4B) inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s12(e); Section 28(4C) inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s12(f).

<sup>48</sup> Section 28(5) amended by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s12(g).

<sup>49</sup> Section 28(5) amended by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s12(g).

<sup>50</sup> Section 28(7) repealed and replaced by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s12(h).



(8)<sup>52</sup> <sup>53</sup>The Minister may, on the recommendation of the Authority in respect of any application or a class of applications, grant an exemption from all or part of the requirements of this section.

(9)<sup>54</sup> <sup>55</sup>An amount deposited by an applicant for certification under Subsection (7) is to be utilized for the purposes of the activity for which an enterprise is certified to carry on business.

## 29. CERTIFICATE.

(1)<sup>56</sup> <sup>57</sup>Where the Authority grants an application under Section 28 it shall issue a certificate for a foreign enterprise to carry on business.

(2) A certificate issued under Subsection (1) shall—

- (a) be in the prescribed form; and
- (b) contain the following terms:—
  - (i) the name of the foreign enterprise;
  - (ii) the nature of the activity;
  - (iii)<sup>58</sup> the location where the foreign enterprise is to carry on business;
  - (iv)<sup>59</sup> any other prescribed terms and conditions.

## 30. REGISTER OF CERTIFICATES.

(1) The Authority shall keep a register to be known as the Register of Certificates, into which shall be entered particulars of—

- (a) every certificate issued under this Part; and
- (b) every certificate cancelled under this Part; and
- (c) such other particulars as are prescribed.

(2) The Register of Certificates, or a document purporting to be, or to be a copy of, or an extract from, the Register of Certificates kept under Subsection (1) is *prima facie* evidence of the matter contained in it.

(3) A copy of a certificate or of an extract from the Register of Certificates may be obtained on payment of the prescribed fee.

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<sup>51</sup> Section 28(7) repealed and replaced by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s12(h).

<sup>52</sup> Section 28(8) added by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s12(i).

<sup>53</sup> Section 28(8) added by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s12(i).

<sup>54</sup> Section 28(9) added by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s12(i).

<sup>55</sup> Section 28(9) added by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s12(i).

<sup>56</sup> Section 29(1) amended by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s13(a).

<sup>57</sup> Section 29(1) amended by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s13(a).

<sup>58</sup> Section 29(2)(b)(iii) amended by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s13(b)(i).

<sup>59</sup> Section 29(2)(b)(iv) amended by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s13(b)(ii).

**31. REGISTER OPEN FOR INSPECTION.**

The Register of Certificates shall be open for inspection during normal business hours.

**32. CHANGE OF OWNERSHIP OF AN ENTERPRISE.**

<sup>60</sup>(1) Subject to Subsection (2), where there is a change in the ownership, shareholding or beneficial ownership or control of a foreign enterprise (other than a foreign enterprise that is a public company and is listed on a prescribed stock exchange), the foreign enterprise shall, within 14 days of the date of the change, apply for a certificate under Section 28.

(2) Subsection (1) applies only where the change in ownership, shareholding or beneficial ownership or control—

- (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 of certification under this Act or registration under the repealed Act; 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.

(3) In this section, “**subsidiary**” and “**holding company**” have the meanings ascribed to them in Section 2 of the *Companies Act 1997*.

(4) Where there is a change in the share-holding or beneficial ownership of a citizen or national enterprise and as a result of the change the citizen or national enterprise becomes a foreign enterprise, it shall within 14 days of the change apply for a certificate under Section 28.

**33. VARIATION.**

(1) A foreign enterprise granted a certificate may apply to the Authority in the prescribed form and on payment of the prescribed fee for a variation of—

- (a) its activity; or
- (b) its location of carrying on business in an activity; or
- (c)<sup>61</sup> any other prescribed term or condition of a certificate.

(2) An application under Subsection (1) shall be considered as if it were an application for a certificate under Section 28.

<sup>60</sup> Section 32 repealed and replaced by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s14.

<sup>61</sup> Section 33(1)(c) amended by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s15.

**34. REGISTER OF FOREIGN INVESTMENT OPPORTUNITIES.**

(1)<sup>62</sup> <sup>63</sup>An enterprise that is not a citizen and carries on business in the country may provide to the Authority a foreign investment opportunity notice in the prescribed form.

(2) An enterprise that is a citizen may provide to the Authority a foreign investment opportunity notice in the prescribed form.

(3) A foreign investment opportunity notice under Subsection (1) shall contain the following particulars:—

- (a) the shareholding or beneficial interest of a non-citizen in an enterprise that is a non-citizen;
- (b) the activity in which the enterprise carries on business;
- (c) such other particulars as are prescribed.

(4)<sup>64</sup> [*Repealed.*]

(5)<sup>65</sup> <sup>66</sup>An enterprise which is not a citizen and which does not carry on business but proposes to carry on business may provide a foreign investment opportunity notice to the Authority.

(6) The Authority shall keep a register, to be known as the Register of Foreign Investment Opportunities into which shall be entered particulars of—

- (a) the share-holding or beneficial interest of a non-citizen in an enterprise that is a non-citizen; and
- (b) the activity in which the enterprise to which this Section relates carries on business.

(7) An application by a foreign enterprise under Section 28 shall be sufficient compliance with this section.

(8)<sup>67</sup> <sup>68</sup>The Register of Foreign Investment Opportunities shall be open for inspection during normal business hours.

**35. FACILITATION OF NEW INVESTMENT.**

In accordance with its function of facilitating investment the Authority may, on payment of the prescribed fee, assist an enterprise in obtaining all necessary licences, compliances and approvals as may be required by law.

<sup>62</sup> Section 34(1) repealed and replaced by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s16(a).

<sup>63</sup> Section 34(1) repealed and replaced by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s16(a).

<sup>64</sup> Section 34(4) repealed by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s16(b).

<sup>65</sup> Section 34(5) amended by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s16(c).

<sup>66</sup> Section 34(5) amended by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s16(c).

<sup>67</sup> Section 34(8) repealed and replaced by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s16(d).

<sup>68</sup> Section 34(8) repealed and replaced by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s16(d).

**36. CANCELLATION AND SUSPENSION OF CERTIFICATION.**

<sup>69</sup>(1) Where the Authority is of the opinion that—

- (a) a foreign enterprise—
  - (i) obtained a certificate by fraud, misrepresentation, mis-statement or omission; or
  - (ii) is in breach of the terms or conditions of its certificate; or
  - (iii) is otherwise in breach of this Act; or
- (b) a certificate issued under this Act to the owner of a foreign enterprise has been cancelled or suspended; or
- (c) an enterprise who is, or is proposed to be an owner, officer or business partner of a foreign enterprise or who has an interest exceeding 10% of that foreign enterprise has—
  - (i) a civil judgement registered against it in a court in the country or elsewhere and such judgement remains unsatisfied; or
  - (ii) been adjudicated bankrupt or insolvent, has been placed into liquidation or has had a receiver or receiver and manager appointed; or
  - (iii) been convicted of an offence punishable under a law by a term of imprisonment of one year or longer or a fine of K10,000.00 or equivalent whether in the country or elsewhere,

the Authority may by written notice to the foreign enterprise—

- (d) suspend the operation of the certificate in relation to that foreign enterprise subject to such terms and conditions as the Authority considers appropriate; or
- (e) cancel the certification of the foreign enterprise from a date not less than 14 days from the date of the notice.

(2) The suspension of any certificate takes effect on and from the date of the notice under Subsection (1) until such time as—

- (a) the Authority revokes the suspension by written notice to the foreign enterprise; or
- (b) the Authority cancels the certification of the foreign enterprise; or
- (c) the Minister exercises his powers under Section 40(3).

(3) The Regulations shall prescribe the manner in which the Authority may give permission to a foreign enterprise to carry on business temporarily for the purpose of winding-up notwithstanding that its certificate has been cancelled or suspended under this section.

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<sup>69</sup> Section 36 repealed and replaced by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s17.

**PART IVA.<sup>70</sup> – CERTIFICATION TO PARTICIPATE IN A NATIONAL ENTERPRISE.**

**36A. CERTIFICATION.**

<sup>71</sup>(1) The Authority may, in accordance with this Part, grant a certificate permitting a foreign enterprise to acquire a relevant interest in a national enterprise or in a citizen enterprise.

(2) Subject to Section 36G, a foreign enterprise shall not acquire or hold a relevant interest in a national enterprise or a citizen enterprise, unless a certificate has been granted under this Part.

(3) A foreign enterprise which is granted a certificate under this Part shall comply with any law applying to it and such compliance is deemed to be a condition of every certificate issued under this Part.

**36B. ACQUISITION OF RELEVANT INTEREST.**

<sup>72</sup>(1) In this Part and in Part VII, unless the contrary intention appears, a foreign enterprise has acquired and holds a relevant interest in another enterprise if that foreign enterprise has—

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

(2) For the purposes of this section, it is immaterial whether ownership or control—

- (a) is direct or indirect, express or implied, 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, other than for conditions pertaining to obtaining a certificate in compliance with this Act.

**36C. APPLICATION FOR CERTIFICATION.**

<sup>73</sup>(1) A foreign enterprise may apply to the Authority for a certificate under this Part.

(2) An application under Subsection (1) shall—

- (a) be in the prescribed form; and

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<sup>70</sup> Part IVA added by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s18.

<sup>71</sup> Section 36A added by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s18.

<sup>72</sup> Section 36B added by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s18.

<sup>73</sup> Section 36C added by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s18.

- (b) contain the prescribed particulars; and
  - (c) be accompanied by the prescribed documents; and
  - (d) be accompanied by the prescribed fee.
- (3) Subject to Section 32, where—
- (a) details of the circumstances of an enterprise or of the officers or owners of an enterprise have been supplied to the Authority in the form prescribed under Subsection (2); and
  - (b) there is subsequently a change in these circumstances,

the enterprise shall, within one month of the date of the change, notify the Authority in writing of that change.

(4) In addition to the documents referred to in Subsection (2), a foreign enterprise applying under Subsection (1) shall provide to the Authority a copy of any agreement or other document relating to the management or proposed management of the national enterprise.

(5) Subject to Subsections (6) and (7) and prior to the issue of a certificate under this Part, the Authority may require an applicant for certification to deposit in a bank in the country in Papua New Guinea currency to the prescribed amount.

(6) The Minister may, on the recommendation of the Authority in respect of any application or a class of applications, grant an exemption from all or any of the provisions of this section.

(7) An amount deposited by an applicant for certification under Subsection (5) is to be utilized for the purposes of the activity for which an enterprise is certified to carry on business.

### **36D. DUTIES OF AUTHORITY IN RESPECT OF APPLICATION UNDER THIS PART.**

<sup>74</sup>(1) The Authority shall, in respect of any application made under this Part—

- (a) verify to its satisfaction the correctness of any statement made in the application or any supporting document; and
- (b) review the merits of the application in order to ascertain whether the proposed activity is likely to achieve all or any of the purposes of this Act; and
- (c) where applicable, review the merits of the application to verify to its satisfaction the ability of the applicant to finance, establish and operate the enterprise in the proposed activity; and
- (d) review the merits of the applicant and any enterprise who is, or is proposed to be, an owner, officer, partner or is otherwise associated with the applicant.

<sup>74</sup> Section 36D added by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s18.

(2) Following verification of the information contained in an application under this Part and review of the merits of the application and the applicant under Subsection (1), the Authority shall grant the application on such terms and conditions it considers appropriate unless—

- (a) in the opinion of the Authority, the application is incorrect, misleading or does not otherwise comply with the Act; or
- (b) in the opinion of the Authority the proposed activity applied for is unlikely to achieve all or any of the purposes of the Act; or
- (c) in the opinion of the Authority the applicant does not possess the ability to finance, establish, operate or otherwise carry out the activity applied for; or
- (d) the applicant and any enterprise who is, or is proposed to be, an owner, officer or partner of the applicant or is otherwise associated with the applicant has—
  - (i) a civil judgement registered against him or it in the country or elsewhere and such judgement is proper and remains unsatisfied; or
  - (ii) been convicted of any offence punishable by a term of imprisonment of one year or longer or a fine of K10,000.00 or equivalent whether in the country or elsewhere; or
  - (iii) been adjudicated bankrupt or insolvent or has been wound-up or has had a receiver or a receiver and manager appointed within the 10 years prior to making the application.

(3) Written notice of the grant or refusal of an application under this section shall be given to the applicant within 35 working days of the making of a complete and correct application.

(4) Where an application is refused, or a certificate is granted in terms other than those applied for, the notice under Subsection (3) shall state the grounds of the refusal to grant the certificate or of the grant in terms other than those applied for.

### **36E. CERTIFICATE.**

<sup>75</sup>(1) Where the Authority grants an application under Section 36D it shall issue a certificate for a foreign enterprise to acquire or hold a relevant interest in a national enterprise or in a citizen enterprise.

(2) A certificate under Subsection (1) shall—

- (a) be in the prescribed form; and
- (b) contain the following:—
  - (i) the name of the foreign enterprise;

<sup>75</sup> Section 36E added by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s18.

- (ii) the name of the national enterprise or citizen enterprise;
- (iii) the activity and location where the national enterprise or citizen enterprise is to carry on business;
- (iv) any other prescribed terms and conditions.

**36F. VARIATION.**

<sup>76</sup>(1) A foreign enterprise granted a certificate under this Part may apply to the Authority in the prescribed form and on payment of the prescribed fee for a variation of—

- (a) the activity conducted by the national enterprise; or
- (b) the location of the business conducted by the national enterprise; or
- (c) the national enterprise in which it participates; or
- (d) any other prescribed term or condition of a certificate.

(2) An application under Subsection (1) shall be considered as if it were an application for a certificate under Section 36C.

**36G. TRANSITIONAL.**

<sup>77</sup>(1) A foreign enterprise which, as at the date of coming into operation of the *Investment Promotion (Amendment) Act 1994*, holds a relevant interest in a national enterprise or in a citizen enterprise may, not later than six months after the introduction of this Part, apply to the Authority for certification under Part IV or this Part.

(2) A foreign enterprise to which Subsection (1) refers is deemed to be certified under this Part until—

- (a) the expiry of a period of six months commencing on and from the date of coming into operation of the *Investment Promotion (Amendment) Act 1994*; or
- (b) the refusal of an application, in respect of the holding by that foreign enterprise of a relevant interest in a citizen enterprise or national enterprise, lodged by that foreign enterprise under Section 28 or Section 36C,

whichever shall first happen.

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<sup>76</sup> Section 36F added by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s18.

<sup>77</sup> Section 36G added by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s18.



**PART V. – INVESTMENT GUARANTEES.**

**37. INVESTMENT GUARANTEES.**

(1) The provisions of this section shall apply to a foreign investor except where treatment more favourable to the foreign investor is accorded under any bilateral or multilateral agreement to which the State is a party.

(2) There shall be no nationalization or expropriation of the property of a foreign investor except–

- (a) in accordance with law; and
- (b) for a public purpose defined by law; and
- (c) in payment of compensation as defined by law.

(3) Subject to any laws relating to taxation and exchange control, a foreign investor shall be allowed the right–

- (a) to remit overseas earnings and repatriate capital; and
- (b) to remit amounts necessary to meet payments of–
  - (i) principal, interest and service charges; and
  - (ii) similar liabilities on foreign loans; and
  - (iii) the costs of other foreign obligations, approved by the State,

at the exchange rate prevailing under the law at the time of remission or repatriation.

(4) Subject only to the exchange rate prevailing under any law at the time, a foreign investor shall be allowed the right to remit overseas all compensation received in accordance with the guarantees under Subsection (2)(c).

(5) Subject to any existing laws and to any agreement between the State and a foreign investor, no rate, tax, rent, charge, due, duty, tariff or other levy and no related procedure or practice, shall discriminate against a foreign investor or its investment on the grounds of its origin.

**38. THE CONVENTION ESTABLISHING THE MULTILATERAL INVESTMENT GUARANTEE AGENCY.**

Certification of an enterprise under Part IV shall constitute approval by the Government of Papua New Guinea within the meaning of Article 15 of the Convention Establishing the Multilateral Investment Guarantee Agency for the issue by the Agency of guarantees in respect of investment.

**39. INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES.**

The *Investment Disputes Convention Act 1978*, implementing the International Convention on the Settlement of Investment Disputes between States and Nationals

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of Other States, applies, according to its terms, to disputes arising out of foreign investment.

**PART VI. – APPEAL.**

**40. APPEAL FROM A DECISION OF THE BOARD OF THE AUTHORITY.**

<sup>78</sup>(1) An enterprise which–

- (a) is refused a certificate; or
- (b) is issued a certificate on terms and conditions objectionable to it; or
- (c) is refused a variation of a term or condition of a certificate; or
- (d) has received a notice of suspension or cancellation; or
- (e) has applied for a certificate but has not received a written notice of the grant or refusal of the certificate,

may, within 20 working days of receipt of the certificate, notice of refusal, suspension or cancellation or of the expiration of the period within which written notice of a grant or refusal of an application is required to be given, appeal to the Minister.

(2) An appeal under Subsection (1) shall–

- (a) be in writing; and
- (b) specify the grounds of the appeal; and
- (c) be accompanied by the prescribed fee.

(3) The Minister shall obtain the recommendation of the Authority in respect of the appeal and consider the merits of the appeal and within 35 working days of receipt of the appeal–

- (a) decide whether to grant or refuse the appeal; and
- (b) advise the enterprise and the Authority in writing of his decision and of the reasons for his decision; and
- (c) when granting an appeal give such direction to the Authority as is appropriate.

(4) The Authority shall comply with a direction given to it by the Minister under Subsection (3).

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<sup>78</sup> Section 40 repealed and replaced by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s19.

**PART VII. – MISCELLANEOUS.****41. OFFENCES.**

(1)<sup>79</sup> <sup>80</sup>A foreign enterprise and an officer or owner (however described) of a foreign enterprise which or who—

- (a) carries on business without a certificate under Part IV or Part IVA; or
- (b) carries on business in an activity that is reserved for a citizen; or
- (c) carries on business in an activity that is reserved for a national enterprise; or
- (d) subject to Section 36G, acquires or holds a relevant interest in a citizen enterprise or in a national enterprise without a certificate under Part IV or under Part IVA; or
- (e) fails to comply with the terms or conditions of a certificate issued under either Part IV or Part IVA,

is guilty of an offence.

Penalty: A fine not exceeding K100,000.00.

Default penalty: A fine not exceeding K10,000.00.

(1A)<sup>81</sup> <sup>82</sup>A national enterprise and an owner or officer (however described) which or who sells, transfers or otherwise disposes of a relevant interest in a national enterprise to a foreign enterprise prior to that foreign enterprise obtaining a certificate under Part IVA, is guilty of an offence.

Penalty: A fine not exceeding K100,000.00.

Default penalty: A fine not exceeding K10,000.00.

(2) A national enterprise and an officer, member, shareholder or owner (however described) of a national enterprise who carries on business in an activity that is reserved for a citizen is guilty of an offence.

Penalty: A fine not exceeding K100,000.00.

Default penalty: A fine not exceeding K10,000.00.

(3) In a prosecution of an offence under this Section, the burden of proof that a foreign enterprise or a national enterprise—

- (a) was not carrying on business; or
- (b) was lawfully carrying on business under Section 27(5) and (6); or
- (c) was carrying on business only for the purpose of winding-up its affairs,

is on the foreign enterprise or national enterprise.

<sup>79</sup> Section 41(1) repealed and replaced by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s20(a).

<sup>80</sup> Section 41(1) repealed and replaced by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s20(a).

<sup>81</sup> Section 41(1A) inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s20(b).

<sup>82</sup> Section 41(1A) inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s20(b).

(4) A certificate purporting to be signed by the Managing Director, stating that on a specified date or during a specified period—

- (a)<sup>83</sup> a term or condition of a certificate granted under this Act had not been complied with; or
- (b)<sup>84</sup> a foreign enterprise or national enterprise was carrying on any business; or
- (c) a foreign enterprise was not certified,

is *prima facie* evidence of that matter.

#### 41A. CONTRACT, ETC., TO BE UNLAWFUL AND VOID IN CERTAIN CIRCUMSTANCES.

<sup>85</sup>Where a contract, agreement or understanding is entered into between a foreign enterprise and another enterprise and—

- (a) that foreign enterprise had not been issued a certificate at the time at which the contract, agreement or understanding was entered into; or
- (b) the subject matter of the contract relates to business activities outside of the nature of the activities for which the foreign enterprise is certified to carry on business,

the court may, on the application of that other enterprise or of the Authority, declare the contract unlawful and void.

#### 41B. GENERAL PENALTY, ETC.

<sup>86</sup>(1) An 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 against this Act.

(2) An enterprise which or who commits an offence against this Act for which no penalty is provided elsewhere in this Act is liable to a penalty of a fine not exceeding K25,000.00 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 default penalty of a fine not exceeding K2,500.00 for each day during which the offence is committed after conviction.

#### 42. INFORMATION.

(1)<sup>87</sup> <sup>88</sup>Where, in the opinion of the Authority—

- (a) any information, books or records in the possession or under the control of a person is or are relevant to the exercise or performance of the

<sup>83</sup> Section 41(4)(a) amended by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s20(c)(i).

<sup>84</sup> Section 41(4)(b) amended by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s20(c)(ii).

<sup>85</sup> Section 41A inserted by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s21.

<sup>86</sup> Section 41B inserted by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s22.

<sup>87</sup> Section 42(1) amended by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s23(a).

<sup>88</sup> Section 42(1) amended by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s23(a).

powers or functions of the Authority or to the achievement of the purposes of this Act; and

- (b) it is desirable that the information be given to the Authority or that the books or records be made available for inspection by the Authority,

the Authority shall issue to the person a written notice to that effect specifying the relevant information, books and records and specifying the place and time at which any information, books and records are to be furnished or produced.

(2)<sup>89</sup> <sup>90</sup>Where a notice under Subsection (1) has been provided to the person to whom it is issued, the person shall furnish or produce for inspection at the place and at the time specified in the notice such information, books and records as are specified in the notice and copies of or extracts from any information, books and records so furnished may be made and retained by the Authority.

(3) The Authority or its authorized agent may take copies of and extracts from any books or records produced under Subsection (2).

(4) Subsection (2) 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 Subsection (6), a person who, without reasonable excuse (proof of which is on him), refuses or fails when requested to do so under Subsection (2) to furnish any information or to produce for inspection any book or record or furnishes information that is false or misleading in a material particular, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

Default penalty: A fine not exceeding K1,000.00.

(6) It is a defence to a charge of an offence against Subsection (5) if the person charged proves that the information, book or record was not relevant to the exercise or performance of the powers or functions of the Authority to the achievement of the purposes of this Act or was not in the possession or under the control of such person at the time of receipt of the notice.

(7)<sup>91</sup> <sup>92</sup>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 Authority in the prescribed form under Section 28(2)(a) or 36C(2)(a) or any variation to that supplied to the Authority under Section 28(2)(b) or 36C(2)(b).

<sup>89</sup> Section 42(2) repealed and replaced by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s23(b).

<sup>90</sup> Section 42(2) repealed and replaced by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s23(b).

<sup>91</sup> Section 41(7) added by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s23(c).

<sup>92</sup> Section 41(7) added by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s23(c).

**43. FALSE STATEMENTS.**

A person who, in a statement made or information furnished under or for the purposes of this Act, makes, without reasonable excuse (proof of which is on him), a statement, or gives information, that is false or misleading in a material particular, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

**44. REGULATIONS.**

<sup>93</sup>The Head of State, acting on advice, may make Regulations not inconsistent with this Act, prescribing all matters that by this Act are permitted or required to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act, and in particular for prescribing fees and for prescribing penalties of fines not exceeding K10,000.00 and default penalties of fines not exceeding K1,000.00 for infringements of the Regulations.

**44A. PROSECUTIONS.**

<sup>94</sup>(1) The Authority may prosecute any offence against this Act.

(2) Any action commenced under this Act shall be heard by the National Court of Papua New Guinea.

(3) In any action brought under this Act by the Authority or against the Authority the court may award costs against any party or claimant other than the Authority, which costs may be recovered by the Authority as a debt to the Authority.

(4) In any action brought by the Authority under this Act, the Court may, on application by the Authority, order an enterprise to cease the activity in the location the subject of the Authority's action until further order.

(5) Any order made by the court under Subsection (4) shall be made on condition that the Authority 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 or penalty or any default fine or penalty to be paid by an enterprise as a result of an action brought by the Authority shall be paid to the Authority and, in addition to any other remedy may be recovered by the Authority as a debt to the Authority.

**44B. CONFIDENTIALITY.**

<sup>95</sup>(1) The Authority shall take all reasonable steps to protect, from unauthorized use or disclosure, information given to it in confidence or in connection with the performance of its functions or the exercise of its powers.

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<sup>93</sup> Section 44: headnote repealed and replaced by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s24.

<sup>94</sup> Section 44A inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s25.

(2) For the purposes of Subsection (1), the disclosure of information as required and permitted by any law or court of competent jurisdiction shall be taken to be authorized use and disclosure of the information.

(3) For the purposes of Subsection (1), the disclosure of information by a person for the purposes of performing that person's functions as an employee of the Authority or as a member of the Board of the Authority shall be taken to be authorized use and disclosure of the information.

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<sup>95</sup> Section 44B inserted by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s26.



**PART VIII. – REPEAL.**

**46. REPEAL.**

The *National Investment and Development Act* (Chapter 120) and the *Investment Promotion Act 1991* (No. 1 of 1991) are repealed by this Act.

**PART IX. – TRANSITIONAL AND SAVING.****47. INTERPRETATION.**

In this Part–

“**NIDA**” means the National Investment and Development Authority established under the repealed Act.

“**repealed Act**” means the *National Investment and Development Act* (Chapter 120).

**48. TRANSFER OF ASSETS.**

All assets (other than land held by the State) which immediately before the coming into operation of this Act were occupied held or owned by NIDA and all obligations and liabilities of NIDA immediately before that coming into operation, are, on that coming into operation, transferred to and become the assets, obligations and liabilities of the Authority.

**49. SAVING OF CONTRACTS.**

All contracts and agreements (other than contracts of employment) entered into, made with, or addressed to NIDA, are, to the extent that they were, immediately before the coming into operation of this Act, binding on and of full force and effect against or in favour of NIDA on that coming into operation, binding on and of full force and effect against or in favour of the Authority as fully and effectually as if, instead of NIDA, the Authority had been a party to them or bound by them or entitled to the benefit of them.

**50. TRANSFER OF OFFICES.**

All offices in the National Public Service carrying out functions under the Acts contained in Schedule 1 to this Act in existence immediately before the coming into operation of this Act are abolished, and shall, on that coming into operation, be deemed to have been created under this Act with–

- (a) the same salaries or scale of salaries; and
- (b) the same conditions of service; and
- (c) the same qualifications; and
- (d) the same duties,

as they had under the *Public Service (Management) Act* 1986 immediately before the date of coming into operation.

**51. TRANSFER OF OFFICERS.**

(1) A person who, immediately before the date of coming into operation of this Act was the substantive occupant of an office referred to in Section 50 shall, on that

coming into operation, be deemed to have been appointed to an equivalent office under this Act.

(2) A person who, immediately before the date of coming into operation of this Act was acting in an office referred to in Section 50 shall, on and from that date of coming into operation, continue to act in the equivalent office under this Act.

## **52. SERVICE.**

All periods that were counted as service in the National Public Service in respect of the officers transferred under Section 51 shall be counted as service for the equivalent purpose under this Act.

## **53. ACTIONS, ETC., NOT TO ABATE.**

Where, immediately before the coming into operation of this Act, any action, arbitration or proceeding was pending or existing by or against a person or body under the repealed Act, it does not, on that coming into operation, abate or discontinue, and is not in any way affected by any provision of this Act, but it may be prosecuted, continued and enforced by, against or in favour of the person or body under the repealed Act as if this Act has not been made.

## **54. SAVING OF EXISTING EXEMPTION, REGISTRATION, ETC.**

(1) Subject to Subsection (2), every notice, variation, cancellation, exemption or registration granted or made under the repealed Act, valid and in force immediately before the coming into operation of this Act, shall continue, on that coming into operation, to have full force and effect as if it had been granted or made under this Act.

(2) On the coming into operation of this Act a certificate of registration under the repealed Act shall be deemed to be a certificate under this Act in respect of the name of the enterprise, its activity and its location but all other conditions of registration of an enterprise under the repealed Act shall, on the coming into operation of this Act, cease to have effect.

(3) The Authority shall issue a certificate to a foreign enterprise in accordance with Subsection (2), as soon as practicable after the coming into operation of this Act.

(4)<sup>96</sup> <sup>97</sup>For the purposes of Sections 28(2) and 42(7), details supplied to NIDA under the repealed Act are deemed to have been supplied to the Authority under this Act.

## **55. APPLICATION OF ACTS.**

Where by or under an Act or other law (other than this Act) any document or instrument wherever made or executed, contains a reference, express or implied, to

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<sup>96</sup> Section 54(4) added by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s27.

<sup>97</sup> Section 54(4) added by the *Investment Promotion (Amendment) Act 1994* (No. 17 of 1994), s27.

NIDA, that reference shall, on the coming into operation of this Act, except where the context otherwise requires, be read and construed and have effect as a reference to the Authority.

**56. FIRST MANAGING DIRECTOR.**

(1) The person who, immediately before the coming into operation of this Act, held the office of Executive Director of NIDA, shall, on that coming into operation, hold the office of Managing Director until a Managing Director is appointed under Section 19.

(2) The person referred to in Subsection (1) shall hold office in accordance with the terms and conditions of employment of the office of Executive Director of NIDA determined under the repealed Act until terms and conditions have been determined for the office of Managing Director at which time those terms and conditions shall apply.

**57. RESTRICTIONS ON REGISTRATION UNDER THE REPEALED ACT.**

Where an Act provides that NIDA shall not grant registration or variation of registration to a foreign enterprise in an activity unless approval is obtained for that registration from a State body or Minister the reference to NIDA shall be read as a reference to the Authority and the reference to the grant of registration or variation of registration shall be read as a reference to the grant of a certificate under Section 29 of this Act.

**SCHEDULE 1**

<sup>98</sup>*Associations Incorporation Act* (Chapter 142);

*Business Groups Incorporation Act* (Chapter 144);

*Business Names Act* (Chapter 145);

*Companies Act* (Chapter 146);

*Trade Marks Act* (Chapter 385).

Office of Legislative Counsel, PNG

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<sup>98</sup> Schedule The words "*Land Groups Incorporation Act* (Chapter 147)" were repealed by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s28(a); The words "*Trade Marks Act* (Chapter 385)" were added by the *Investment Promotion (Amendment) Act* 1994 (No. 17 of 1994), s28(b).