

No. 2 of 2023.

Investment Promotion (Amendment) Act 2023.

Certified on : 29 MAY 2023



No. 2 of 2023.

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No. 2 of 2023.

AN ACT

entitled

Investment Promotion (Amendment) Act 2023,

Being an Act -

- (a) to amend the *Investment Promotion Act 1992*; and
 - (b) to reform the law relating to foreign investment certification, and to facilitate promotion of micro, small, and medium-sized enterprises,
- 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.

1. INTERPRETATION (AMENDMENT OF SECTION 3).

Section 3 of the Principal Act is amended in Subsection (1) -

- (a) by repealing the definition of “activity” and replacing it with the following:

““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
- (b) an activity set out in the publication entitled the Papua New Guinea Standard Industrial Classification, published by the National Statistics Office, as amended from time to time; or
- (c) any activity reserved for a citizen under Section 27; or
- (d) any activity restricted under Section 27A,

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;” and

- (b) by inserting after the definition of “Authority”, the following new definition:

““beneficial owner” means a natural person or persons who ultimately owns or controls a share or other membership interest, respectfully, or who exercises ultimate effective control over a legal person or arrangement affecting shares or membership interests;” and

- (c) by inserting after Paragraph (o) in the definition of “carrying on a business”, the following new paragraph:

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“(oa) is a person engaged in the practice of accounting, architecture, engineering, law, dentistry, medicine or veterinary medicine, and who is present in Papua New Guinea temporarily, from time to time, authorised to provide professional services; or”; and

(d) by deleting “or Section 36E” in the definition of “certificate”; and

(e) by inserting after the definition of “investment”, the following new definition:

““listed foreign enterprise” means a company listed on any stock exchange in Papua New Guinea or any stock exchange which is a member of the World Federation of Exchanges;”; and

(f) by inserting after the definition of “officer”, the following new definitions:

““prescribed form or format” includes a form or format approved by the Registrar;
“register” means the foreign investment register established under Section 40C;
“Registrar” means the Registrar of Foreign Investment appointed under Section 40A;”; and

(g) by inserting after the definition of “repealed Act”, the following new definition:

““sign” in relation to information that is filed electronically, includes an electronic signature if -
(a) the signature identifies the person signing; and
(b) the signature indicates that person’s approval of the information; and
(c) the method of signing is approved by the Registrar;”; and

(h) by inserting after the definition of “this Act”, the following new definition:

““writing” includes -
(a) the recording of words in a permanent and legible form; or
(b) the recording of words by electronic means that can be retrieved and read;
or
(c) the display of words by any form of electronic or other means of communication that is subsequently recorded by electronic means that can, by any means, be retrieved and read.”.

2. FUNCTIONS OF THE INVESTMENT PROMOTION AUTHORITY (REPEAL AND REPLACEMENT OF SECTION 6).

The Principal Act is amended by repealing Section 6 and replacing it with the following:

“6. FUNCTIONS OF THE INVESTMENT PROMOTION AUTHORITY.

(1) The functions of the Authority, in accordance with any directions of the National Executive Council or the Minister on development objectives and policies, are -
(a) to advise the Minister and National Executive Council on all matters relating to foreign and domestic investment in Papua New Guinea, including -

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- (i) the development of Papua New Guinea's national investment policy; and
- (ii) the scope and appropriateness of any amendments to the Reserved Activities List and the Restricted Activities List; and
- (b) to advise the Minister on the development and maintenance of an efficient, effective, and timely regulatory environment for investment in Papua New Guinea; and
- (c) to advise the Minister on policy issues which relate to this Act; and
- (d) to provide information to investors in the country and overseas; and
- (e) to encourage and facilitate investment in the country by assisting investors to obtain all necessary licences, compliances and approvals; and
- (f) to facilitate the introduction of citizens and foreign investors to each other and to activities and investments of mutual benefit; and
- (g) to facilitate citizen participation in investment and in the ownership of national and foreign enterprises; and
- (h) to provide a system of certification of foreign enterprises and to require that a foreign enterprise may only carry on business if so certified; and
- (i) 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
- (j) to maintain registers of foreign certifications and foreign investment opportunities; and
- (k) to carry out such other functions as are given to the Authority by this Act or by any other law; and
- (l) generally to do such supplementary, incidental or consequential acts and things as are necessary or convenient for carrying out its functions.

(2) The Board shall discharge the functions set out in Subsections (1)(a), (b) and (c).

(3) The Managing Director shall discharge the functions set out in Subsections (1)(d), (e), (f) and (g).

(4) The Registrar shall discharge the functions set out in Subsections (1)(h), (i) and (j).”

3. BOARD FOR THE INVESTMENT PROMOTION AUTHORITY (AMENDMENT OF SECTION 8).

Section 8 of the Principal Act is amended by repealing Subsection (2) and replacing it with the following:

- “(2) The Board shall -
- (a) perform the functions, exercise the powers and manage and direct the affairs of the Authority; and
 - (b) determine the strategic direction that will contribute to achieving the mission and goals of the Authority; and
 - (c) approve annual budgets and work plans of the Authority; and
 - (d) monitor the performance of the Authority in accordance with annual plans and budget.”

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4. MEETINGS OF THE BOARD (AMENDMENT OF SECTION 15).

Section 15 of the Principal Act is amended by inserting immediately after Subsection (3), the following new subsection:

“(3A) A meeting of the Board may be held either in person or by means of audio, or audio and visual, communication by which all Board members participating and constituting a quorum may simultaneously hear each other throughout the meeting.”.

5. DISCLOSURE OF INTEREST BY MEMBER OF THE BOARD (REPEAL AND REPLACEMENT OF SECTION 16).

Section 16 of the Principal Act is repealed and replaced with the following:

“16. DISCLOSURE OF INTEREST BY MEMBER OF THE BOARD.

(1) In this section -

“direct or indirect interest” means a financial interest of a Board member or a related person in a transaction that would reasonably be expected to impair the objectivity of the Board member’s judgment when participating in action on the authorisation of the matter being considered;

“related person” means the Board member’s spouse, a child, stepchild, grandchild, parent, step-parent, grandparent, sibling, step-sibling, half-sibling, aunt, uncle, niece, nephew, or first cousin (or spouse of any thereof) of the member or of the member’s spouse, or an individual living in the same home as the member, or an entity controlled by the member.

(2) 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.

(3) A disclosure under Subsection (2), 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 purposes of constituting a quorum of the Board for any such deliberation or decision.”.

6. CERTIFICATION (AMENDMENT OF SECTION 25).

Section 25 of the Principal Act is amended in Subsection (1) by repealing the word “Authority” and replacing it with “Registrar”.

7. MINISTER MAY DECLARE ENTERPRISE TO BE A FOREIGN ENTERPRISE (AMENDMENT OF SECTION 25A).

Section 25A of the Principal Act is amended by repealing the word “Authority” and replacing it with “Registrar”.

8. EXEMPTION (REPEAL AND REPLACEMENT OF SECTION 26).

The Principal Act is amended by repealing Section 26 and replacing it with the following:

“26. EXEMPTION.

(1) Subject to Subsections (2) and (3), where, in the opinion of the Registrar, the activity in which a foreign enterprise intends to engage or is engaged in is intended -

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(a) primarily for religious, charitable, educational or some other socially useful purpose; or
(b) for a non-profit purpose (other than as 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 Registrar 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 Registrar shall give notice on an internet site maintained by the Authority to which the public has access that at the expiration of 30 days from the date of publication of the notice, he 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 in writing to the Registrar in the prescribed form.

(4) The Registrar shall consider any objection received 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).”.

9. RESERVED ACTIVITIES (AMENDMENT OF SECTION 27).

Section 27 of the Principal Act is amended -

(a) by repealing Subsection (1) and replacing it with the following:

“(1) The Regulations may prescribe activities which are reserved for citizens in accordance with Section 44 and Section 44AA.”; and

(b) by repealing Subsections (2) and (3).

10. NEW SECTIONS 27A, 27B, 27C AND 27D.

The Principal Act is amended by inserting, immediately after Section 27, the following new sections:

“27A. RESTRICTED ACTIVITIES.

(1) Regulations may prescribe activities which a foreign enterprise may carry on, subject to the foreign enterprise satisfying a condition or conditions in relation to the activity in accordance with Section 44 and Section 44AA.

(2) Regulations may prescribe conditions in reference to any or all of the following, which may vary based upon the activity:

- (a) a minimum level of investment required to undertake the activity, including the form the investment must take; or
- (b) minimum levels of citizen or national enterprise equity ownership of the enterprise carrying out the activity; or
- (c) any other prescribed conditions.

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(3) An enterprise which is not a citizen and which is lawfully carrying on business prior to the commencement of a Regulation made under Subsection (1), may continue to carry on business in that restricted activity and is not required to comply with the conditions prescribed for the restricted activity.

(4) An enterprise carrying on business in accordance with Subsection (3) shall continue to not be required to comply with conditions prescribed for the restricted activity if there is a subsequent change in ownership, shareholding or beneficial ownership or control of the enterprise.

27B. ACTIVITIES NOT TO BE RESERVED OR RESTRICTED.

An activity shall not be included in the list of activities reserved under Section 27(1) or restricted under Section 27A(1) -

- (a) unless at least one citizen of Papua New Guinea, whether by himself, is -
 - (i) a member of a joint venture; or
 - (ii) a partner in a partnership; or
 - (iii) a trustee; or
 - (iv) an agent or employee,and carries out the activity in Papua New Guinea; and
- (b) unless at least 10 business operators conduct the activity in Papua New Guinea; and
- (c) if it is carried on as a business, or part of a business, that produces or supplies goods or services which are used regularly by, or are otherwise important to, the operation of other businesses in Papua New Guinea.

27C. REVIEW OF RESERVED ACTIVITIES LIST AND RESTRICTED ACTIVITIES LIST.

(1) The Board shall review the Reserved Activities List and the Restricted Activities List, including the prescribed conditions applicable to the Restricted Activities List, at intervals of not more than three years.

(2) In undertaking the review, the Board shall have regard to, but is not limited to, the following principles:

- (a) keeping the lists as short as possible; and
- (b) reduction over time of the number of activities contained in the lists to encourage competition within the economy of Papua New Guinea; and
- (c) providing clear definitions of each activity to enable effective monitoring and enforcement of conditions; and
- (d) inclusion of an activity only if consistent with Papua New Guinea's commitments and obligations under international, regional, and bilateral trade and investment agreements; and
- (e) no inclusion of an activity without appropriate provision for existing foreign investors who have been issued with a valid certificate in relation to that activity to continue carrying on that activity.

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- (3) In undertaking the review, the Board shall -
- (a) prepare a list of activities proposed to be considered for inclusion in the Reserved Activities List and Restricted Activities List, including proposed conditions for activities for consideration in the Restricted Activities List; and
 - (b) ensure the proposed activities and conditions are published on an internet site maintained by the Authority to which members of the public have access; and
 - (c) consult with -
 - (i) relevant stakeholders, including stakeholders at national and local levels of government, stakeholders in the private sector, and non-governmental organisations; and
 - (ii) the general public.
- (4) The Board must complete its review no sooner than six months from the date that the proposed activities and conditions are published under Subsection (3)(b).
- (5) The Board must prepare a report of its review, including -
- (a) recommendations for the inclusion or removal of activities in the Reserved Activities List; and
 - (b) recommendations for the inclusion or removal of activities in the Restricted Activities List, including the prescribed conditions applicable to activities in the Restricted Activities List,
- and provide the report to the Minister within 10 working days of finalising the report.

27D. REVIEW BY MINISTER.

(1) The Minister shall, within 20 working days after receiving a report, accept or reject the recommendations submitted in accordance with Section 27C(5).

(2) If the Minister rejects a recommendation, whether for an amendment to the lists or not, the Minister shall -

- (a) make public a statement of his reasons for rejecting the recommendation; and
- (b) ensure that the statement is published on an internet site maintained by the Authority to which members of the public have access.”.

11. APPLICATION FOR CERTIFICATION (REPEAL AND REPLACEMENT OF SECTION 28).

The Principal Act is amended by repealing Section 28 and replacing it with the following:

“28. APPLICATION FOR CERTIFICATE.

(1) 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.

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- (2) 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.
- (3) A foreign enterprise may apply to the Registrar for a certificate under this Part.
- (4) An application under Subsection (3) shall be in the prescribed form and format, signed by the applicant, and contain the following particulars:
- (a) the name of the applicant; and
 - (b) the applicant's physical address in Papua New Guinea and a physical address for service in Papua New Guinea; and
 - (c) the applicant's contact details, including email address; and
 - (d) the name, address, and contact details, including email address, of the applicant's representative in Papua Guinea; and
 - (e) if the applicant is an individual, the individual's address in his country of residence; and
 - (f) if the applicant is a trust, partnership, joint venture, or unincorporated body -
 - (i) the name and residential address of each of the trustees, partners, or members who are individuals; and
 - (ii) the name, address in the country of incorporation, and registration number in that country for each trustee, partner, or member that is an incorporated body; and
 - (g) if the applicant is an incorporated body -
 - (i) its address in its country of incorporation and registration number in that country; and
 - (ii) the names and residential addresses of each of its directors or equivalent; and
 - (h) in respect of each proposed business activity -
 - (i) the nature of the activity; and
 - (ii) a description of the investment and business operations relating to the activity, including proposed capital investment and creation of employment; and
 - (iii) the proposed location or locations of the activity; and
 - (i) any other prescribed information.
- (5) The application shall be accompanied with the prescribed fee and be accompanied by such information as the Registrar may require.
- (6) The application shall disclose whether -
- (a) the applicant is an undischarged bankrupt in any jurisdiction, in the case of an individual; or

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- (b) any trustee, partner, or member of the applicant is an undischarged bankrupt in any jurisdiction or in liquidation, receivership, or voluntary administration in any jurisdiction, in the case of an applicant that is a trust, partnership, joint venture, or unincorporated body; or
- (c) the applicant is in liquidation, receivership, or voluntary administration in any jurisdiction, in the case of an applicant that is an incorporated body; or
- (d) the applicant has a civil judgement registered against him which remains unsatisfied; or
- (e) the applicant has been convicted of, or is currently charged with, any offence in any country.

(7) Subject to Section 32, where there is an alteration in any of the particulars supplied under Subsection (4), the enterprise shall notify the Registrar in writing of the alteration within 10 working days of the date of the alteration.

(8) In addition to the information referred to in Subsection (4), a foreign enterprise applying under Subsection (3) shall provide to the Registrar a copy of any agreement or other document relating to the management or proposed management of the foreign enterprise.

- (9) The Registrar shall grant an application made under Subsection (3) unless -
- (a) the applicant proposes to carry on an activity that is reserved for citizens; or
 - (b) in the opinion of the Registrar, the application is incorrect or misleading or does not otherwise comply with this Act or the Regulations; or
 - (c) the applicant and any enterprise who is, or is proposed to be, an owner, officer, director 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; or
 - (d) the Registrar on reasonable grounds is of the opinion that the application is not genuine,

in any of which cases the Registrar must not grant the application.

(10) Upon the grant of an application to carry on a business in a restricted activity or activities, the applicant shall comply with all conditions specified in the certificate.

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

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(12) If an application under this section is refused, or a certificate is granted in terms other than those applied for, the notice under Subsection (11) must state the grounds for the refusal, or the grant of the certificate in terms other than those applied for as the case may be.

(13) Subject to Subsections (14) and (15) and prior to the issue of a certificate under this Part, the Registrar may require an applicant for certification to deposit in a bank in the country in Papua New Guinea currency the prescribed amount.

(14) The Minister may, on the recommendation of the Registrar in respect of any application or a class of applications, grant an exemption from all or part of the requirements of this section.

(15) An amount deposited by an applicant for certification under Subsection (13) is to be utilised for the purposes of the activity for which an enterprise is certified to carry on business.”.

12. NEW SECTION 28A.

The Principal Act is amended by inserting, immediately after Section 28, the following new section:

“28A. APPLICATION FOR ADVISORY SERVICE.

(1) A foreign enterprise may apply to the Registrar for an advisory service concerning an application for certification or any other submission or documentation required to be submitted to the Registrar under this Act.

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

- (a) be in the prescribed form and format and include all supporting documentation; and
- (b) include all prescribed information; and
- (c) be accompanied by the prescribed fee.

(3) The Registrar may refuse an application at his discretion.

(4) The Registrar may issue an advisory service response subject to any conditions he considers necessary or appropriate.

(5) An advisory service response provided under this section shall -

- (a) not obligate the Registrar to approve a later filing, for which the advisory service response was issued; and
- (b) not be relied upon by the applicant; and
- (c) not create a right that a future filing be granted by the Registrar.”.

13. CERTIFICATE (AMENDMENT OF SECTION 29).

Section 29 of the Principal Act is amended in Subsection (1) by repealing the word “Authority” and replacing it with “Registrar”.

14. NEW SECTIONS 29A, 29B, 29C AND 29D.

The Principal Act is amended by inserting, immediately after Section 29, the following new sections:

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29A. DURATION OF VALIDITY OF CERTIFICATE.

(1) Subject to Subsection (2), a certificate is valid from the date of its issue until the cessation of -

- (a) the business activity to which it relates; or
- (b) if it relates to more than one activity, the last remaining activity to which it relates.

(2) A certificate -

- (a) expires and ceases to be valid if no business activity to which it relates commences within 1 year after the date of the issue of the certificate; and
- (b) is not valid for any period for which registration is suspended under Section 29C; and
- (c) ceases to be valid upon cancellation under this Act.

29B. REQUIREMENT TO FILE ANNUAL STATUS REPORT.

(1) The holder of a certificate shall prepare an annual status report.

(2) The holder shall file the report in the month of the year that is the anniversary of the month of issue of the certificate.

(3) The report shall -

- (a) be in the prescribed form or format; and
- (b) contain the prescribed particulars; and
- (c) be signed by or on behalf of the holder; and
- (d) be accompanied by the prescribed fee; and
- (e) be filed with the Registrar; and
- (f) if the report is filed late, be accompanied by the prescribed late filing fee.

(4) The Registrar may withhold particulars from an annual status report from public disclosure on grounds of commercial confidentiality.

29C. SUSPENSION OF CERTIFICATE FOR FAILURE TO FILE ANNUAL STATUS REPORT.

(1) The Registrar may suspend a certificate if the holder fails to file an annual status report.

(2) The Registrar -

- (a) may suspend the certificate at any time three months after the date for filing the report has lapsed; and
- (b) is not required to give prior notice of the suspension.

(3) Subject to Subsection (4), on an application by the holder, the Registrar shall reinstate a suspended certificate.

(4) An application for reinstatement under Subsection (3) shall be -

- (a) made no later than one year after the date of suspension; and
- (b) in the prescribed form or format; and
- (c) accompanied by -

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- (i) the outstanding annual status reports and associated prescribed filing fees; and
 - (ii) the prescribed late filing fee in respect of the outstanding annual status reports; and
- (d) filed with the Registrar.

(5) On reinstatement under Subsection (3), a certificate that has been suspended shall be treated as having continued in force during the period of suspension.

29D. EFFECT OF SUSPENSION OF CERTIFICATE FOR FAILURE TO FILE ANNUAL STATUS REPORT.

(1) The holder of a suspended certificate shall not, during the period of suspension, carry on the business activity to which the certificate relates.

(2) A suspended certificate is automatically cancelled if -

- (a) the certificate has remained suspended for one year from the date of suspension; and
- (b) the holder has not filed an application for the reinstatement of the certificate that complies with Section 29C.

(3) Nothing in Section 36 applies to the suspension or automatic cancellation of a certificate for failure to file an annual status report.”

15. REPEAL OF SECTION 30.

Section 30 of the Principal Act is repealed.

16. REPEAL OF SECTION 31.

Section 31 of the Principal Act is repealed.

17. CHANGE OF OWNERSHIP OF AN ENTERPRISE (REPEAL AND REPLACEMENT OF SECTION 32).

The Principal Act is amended by repealing Section 32 and replacing it with the following:

“32. CHANGE OF OWNERSHIP OF AN ENTERPRISE.

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

(2) Subject to Subsection (3), where there is a change in the ownership, shareholding or beneficial ownership or control of a foreign enterprise, the foreign enterprise shall, within 10 working days of the date of the change, apply for a certificate under Section 28.

(3) Subsection (2) does not apply where the change in ownership, shareholding or beneficial ownership or control -

- (a) is less than 10% in any one year or represents a change of less than 25% in the ownership of the enterprise as from the date of certification under this Act; or

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- (b) arises 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; or
- (c) is of a listed foreign enterprise; or
- (d) arises from an alteration in ownership of an enterprise which is a subsidiary of a listed foreign enterprise where the enterprise remains a subsidiary of that listed foreign enterprise.

(4) Where there is a change in the shareholding 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 one month of the change apply for a certificate under Section 28.”.

18. VARIATION (AMENDMENT OF SECTION 33).

Section 33 of the Principal Act is amended in Subsection (1) by repealing the word “Authority” and replacing it with “Registrar”.

19. REGISTER OF FOREIGN INVESTMENT OPPORTUNITIES (AMENDMENT OF SECTION 34).

Section 34 of the Principal Act is amended -

- (a) in Subsection (1) by repealing the word “Authority” and replacing it with “Registrar”; and
- (b) in Subsection (2) by repealing the word “Authority” and replacing it with “Registrar”; and
- (c) in Subsection (3)(a) by inserting the word “ownership” after “beneficial”; and
- (d) in Subsection (5) by repealing the word “Authority” and replacing it with “Registrar”; and
- (e) in Subsection (6) -
 - (i) by repealing the word “Authority” and replacing it with “Registrar”; and
 - (ii) by inserting the word “ownership” after “beneficial”.

20. FACILITATION OF NEW INVESTMENT (AMENDMENT OF SECTION 35).

Section 35 of the Principal Act is amended by -

- (a) repealing the word “its” and replacing it with “the”; and
- (b) repealing the word “Authority” and replacing it with “Managing Director”.

21. CANCELLATION AND SUSPENSION OF CERTIFICATION (AMENDMENT OF SECTION 36).

Section 36 of the Principal Act is amended -

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- (a) in Subsection (1) by repealing the word “Authority” and replacing it with “Registrar”; and
- (b) in Subsection (1)(a) by inserting, immediately after Subparagraph (iii), the following new subparagraphs:
 - (iv) upon advice of the Commissioner for Taxation, is otherwise in breach of the *Income Tax Act 1959*, *Goods and Services Tax Act 2003*, or *Stamp Duties Act* (Chapter 117); or
 - (v) upon the advice of the Chief Migration Officer, is otherwise in breach of the *Migration Act* (Chapter 16); or
 - (vi) upon the advice of the Head of the Department responsible for the administration of the Act, is otherwise in breach of the *Employment of Non-Citizens Act 2007*; or
 - (vii) upon the advice of the Head of the Department responsible for the administration of the Act, is otherwise in breach of the *Employment Act* (Chapter 373); or
 - (viii) upon the advice of the Governor of the Bank of Papua New Guinea, is otherwise in breach of the *Superannuation (General Provisions) Act 2000*; or”; and
- (c) in Subsection (1)(c) by repealing the word “Authority” and replacing it with “Registrar”; and
- (d) in Subsection (1)(d) by repealing the word “Authority” and replacing it with “Registrar”; and
- (e) in Subsection (2)(a) by repealing the word “Authority” and replacing it with “Registrar”; and
- (f) in Subsection (2)(b) by repealing the word “Authority” and replacing it with “Registrar”; and
- (g) in Subsection (2)(c) by repealing the word “Section 40(3)” and replacing it with “Section 40(7); and
- (h) in Subsection (3) by repealing the word “Authority” and replacing it with “Registrar”.

22. REPEAL OF PART IVA.

Part IVA of the Principal Act is repealed.

23. APPEAL FROM A DECISION OF THE BOARD OF THE AUTHORITY (AMENDMENT OF SECTION 40).

Section 40 of the Principal Act is amended -

- (a) in the sectional heading by repealing the words “**BOARD OF THE AUTHORITY**” and replacing it with “**REGISTRAR**”; and
- (b) in Subsection (1) by repealing the word “Minister” and replacing it with “Board”; and

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- (c) in Subsection (3) by repealing the word "Minister" and replacing it with "Board" and repealing the word "Authority" and replacing it with "Registrar"; and
- (d) in Subsection (3)(b) by -
 - (i) repealing the word "Authority" and replacing it with "Registrar"; and
 - (ii) repealing the word "his" occurring twice and replacing it with "its"; and
- (e) in Subsection (3)(c) by repealing the word "Authority" and replacing it with "Registrar"; and
- (f) in Subsection (4) by -
 - (i) repealing the word "Authority" and replacing it with "Registrar"; and
 - (ii) repealing the word "it" and replacing it with "him"; and
 - (iii) repealing the word "Minister" and replacing it with "Board"; and
- (g) by inserting immediately after Subsection (4) the following new subsections:

“(5) Where the appeal of an enterprise is refused by the Board under Subsection (3), the enterprise may, within 20 working days of the decision of the Board, appeal to the Minister.

- (6) An appeal under Subsection (5) shall -
 - (a) be in writing; and
 - (b) specify the grounds of the appeal; and
 - (c) be accompanied by the prescribed fee.

(7) The Minister shall obtain the recommendation of the Registrar 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 Registrar in writing of his decision and of the reasons for the decision; and
- (c) upon granting an appeal give such direction to the Registrar as is appropriate.

(8) The Registrar shall comply with a direction given to him by the Minister under Subsection (7).”.

24. NEW PART VIA.

The Principal Act is amended by inserting immediately before Part VII, the following new Part:

“PART VIA. - REGISTRAR OF FOREIGN INVESTMENT.

40A. REGISTRAR.

(1) A Registrar of Foreign Investment is hereby established, and shall be appointed by the Managing Director.

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(2) The Registrar may, in writing, delegate any or all of the powers (except this power of delegation) or functions of the Registrar under this Act or the Regulations to one or more officers of the Authority.

(3) The Registrar holds office until the earlier of -

- (a) the cessation of his employment; or
- (b) the revocation of his appointment by the Managing Director.

40B. GENERAL FUNCTIONS OF REGISTRAR.

The Registrar is responsible for -

- (a) ensuring that a register of foreign investments is kept and maintained, which may be kept in the manner that the Registrar thinks fit, including, either wholly or in part, by means of an electronic or digital register; and
- (b) the receipt, processing, and determination of applications for certificates; and
- (c) issuing certificates and replacement certificates; and
- (d) suspending and cancelling certificates; and
- (e) monitoring foreign investments in Papua New Guinea; and
- (f) ensuring compliance by foreign investors with this Act and the Regulations; and
- (g) any other functions conferred on the Registrar by or under this Act or the Regulations; and
- (h) receiving annual status reports.

40C. FOREIGN INVESTMENT REGISTER.

(1) The Registrar shall establish and maintain a foreign investment register.

(2) The register may be kept in the form that the Registrar thinks fit, including, partly or wholly, in electronic form, but in determining the form of the register, the Registrar shall have regard to facilitating the search or inspection of the register by members of the public.

(3) A person may file a document with the Registrar in any format permitted by the Registrar, including an electronic format, in accordance with the procedures established by the Registrar from time to time.

40D. CONTENTS OF REGISTER.

The register shall contain the following information in respect of each certificate issued under Section 28(7):

- (a) the name of the current holder; and
- (b) the current holder's address in Papua New Guinea and address for service; and
- (c) the current holder's contact details, including email address; and
- (d) the name, address, and contact details, including email address of the current holder's representative in Papua New Guinea; and
- (e) the registration number and date of issue of the certificate; and
- (f) if the certificate is a replacement certificate, its date of issue; and
- (g) the business activity or activities to which the certificate relates; and

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- (h) if the certificate is suspended, the date of suspension; and
- (i) if the certificate has been automatically cancelled under Section 29D(2), the date of cancellation and the reason for cancellation; and
- (j) if the certificate has been cancelled under Section 36, the effective date of cancellation and the reason or reasons for cancellation; and
- (k) documents filed under this Act for registration on the register; and
- (l) any other information prescribed by the Regulations for inclusion in the register.

40E. INSPECTION OF REGISTER.

- (1) Any person may, on payment of the prescribed fee (if any), inspect -
 - (a) a document that is part of the register; or
 - (b) a document or details of a document that have been recorded or stored in the digital register.
- (2) An inspection made at the office of the Registrar must be made during the hours when the office is open to the public for business on a working day.
- (3) Subsection (1) does not apply to any document or part of a document that is deemed confidential under the Regulations or by the Registrar under Section 29B(4).

40F. REGISTRAR'S ANNUAL REPORT.

- (1) The Registrar shall within three months after the end of each financial year -
 - (a) prepare an annual report as to -
 - (i) the administration of this Act during the financial year; and
 - (ii) the conduct of investment activities by foreign investors in Papua New Guinea during the financial year; and
 - (b) give a copy of the report to the Minister; and
 - (c) ensure that the report is published on an internet site maintained by the Authority to which members of the public have access.
- (2) When making the report, the Registrar shall -
 - (a) consider and take into account the annual status reports filed during the financial year by the foreign enterprises; and
 - (b) not specify information in the report in a manner that identifies a specific foreign enterprise or discloses the details of the investment or business operations of a foreign enterprise.

- (3) The Minister shall, as soon as practicable after receiving the report, forward the report to the Speaker for presentation to the Parliament.

40G. REGISTRAR'S POWERS OF INSPECTION.

- (1) The Registrar may, by written notice, require a person to file with or otherwise provide to the Registrar such information as the Registrar considers reasonably necessary to enable the Registrar to ascertain whether or not a person is carrying on a business activity in breach of this Act or the Regulations.

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- (2) The person named in the notice shall file the information -
 - (a) within the time specified in the notice, which shall be not less than 10 working days after issue of the notice; or
 - (b) on application to the Registrar within the 10 working day period, within the further time period that the Registrar may allow.

40H. REGISTRAR MAY REQUIRE INFORMATION.

- (1) The Registrar may give notice to the holder of a certificate requiring it to provide -
 - (a) corrected or updated details on any matter entered in the register for that foreign enterprise; and
 - (b) a certified copy of any document that has been or ought to have been filed with the Registrar for registration under this Act.

(2) A notice by the Registrar under this section must specify the time for compliance with the notice, which must be no less than 10 working days after the issue of the notice.

(3) The foreign enterprise must provide the information or certified copy within the time specified by the Registrar's notice.

(4) If the information provided to the Registrar under this section differs from the information shown in the register for the foreign enterprise, the Registrar may amend the register accordingly.

(5) A foreign enterprise that fails to comply with a notice under Subsection (1) commits an offence.

Penalty: A fine not exceeding K100,000.00.

40I. FALSE STATEMENTS.

(1) Every person who, with respect to any information or document required by or for the purposes of this Act -

- (a) makes, or authorises the making of, a statement that is false or misleading in a material particular knowing it to be false or misleading; or
- (b) omits, or authorises the omission from a document of any matter knowing that the omission makes the document false or misleading in a material particular,

commits an offence.

Penalty: A fine not exceeding K100,000.00 or a term of imprisonment not exceeding two years, or both.

40J. RECTIFICATION OF REGISTER.

- (1) The Registrar may -
 - (a) rectify the register if the Registrar is satisfied that any information has been wrongly entered in, or omitted from, the register; or

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(b) correct any particulars that appear to the Registrar to have been incorrectly entered in the register.

(2) Unless the rectification or correction relates solely to the person who provided it, the Registrar must not rectify or correct the register without first -

- (a) giving notice of the rectification or correction to the foreign enterprise and to persons whom the Registrar considers will be materially affected by it; and
- (b) allowing a person to whom notice is given a reasonable opportunity to object.

40K. REGISTRAR MAY GIVE NOTICES.

(1) The Registrar may give a notice under this Act to a person in the manner that the Registrar considers appropriate.

(2) Without limiting Subsection (1), the Registrar may give a notice to such person by -

- (a) delivering it to such person; or
- (b) delivering or posting it to such person's address for service in Papua New Guinea notified to the Registrar under this Act or the Regulations; or
- (c) posting or delivering it to such person's last known address; or
- (d) sending it by facsimile to a facsimile number used by such person for transmission of documents; or
- (e) sending it to such person's email address notified to the Registrar under this Act or the Regulations.

(3) A document admissible in legal proceedings as a copy of a notice given by the Registrar includes a document that -

- (a) appears to be a copy of a notice given by the Registrar; and
- (b) is certified by the Registrar, or by a person authorised by the Registrar, as having been derived from a device or facility that records or stores information electronically or by other means.

40L. EVIDENTIARY MATTERS.

(1) This section applies to a document that purports to be -

- (a) a certificate issued under this Act; or
- (b) a copy of or extract from the register; or
- (c) a copy of or extract from a document forming part of the register; or
- (d) a combination of any of two or more of a certificate, copy, or extract referred to in Paragraphs (a), (b) and (c).

(2) A document to which this Section applies is *prima facie* evidence in legal proceedings of any matter contained or set out in the document.

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40M. EXCLUSION OF LIABILITY FOR CERTAIN ACTS.

The Registrar and any person appointed or authorised by the Registrar or employed in the office of the Registrar is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in performance or purported performance of any function, or in the exercise or purported exercise of any power, conferred or expressed to be conferred by or under this Act.”.

25. OFFENCES (AMENDMENT OF SECTION 41).

Section 41 of the Principal Act is amended -

- (a) in Subsection (1)(a) by repealing “or Part IVA”; and
- (b) by repealing Subsection (1)(c) and replacing it with:
 - “(c) carries on a business that is restricted not in accordance with the conditions in the Regulations; or”; and
- (c) by repealing “Subsection (1)(d)”; and
- (d) in Subsection (1)(e) by repealing “or Part IVA”; and
- (e) by repealing “Subsection (1A)”; and
- (f) in Subsection (3)(b) by inserting “or 27A(3)” immediately after Section 27(5) and (6).

26. NEW SECTION 41C.

The Principal Act is amended by inserting immediately after Section 41B the following new section:

“41C. CARRYING ON BUSINESS FRAUDULENTLY.

(1) Every person who is knowingly a party to a foreign enterprise carrying on business with intent to defraud creditors of the foreign enterprise or any other person or for a fraudulent purpose commits an offence.

Penalty: A fine not exceeding K100,000.00 or imprisonment for a term not exceeding two years, or both.

(2) Every holder of a foreign certificate, including every director of foreign enterprise that is a company, who -

- (a) by false pretenses or other fraud induces a person to give credit to the foreign enterprise; or
- (b) with intent to defraud creditors of the foreign enterprise -
 - (i) gives, transfers, or causes a charge to be given on, any property of the foreign enterprise to any person; or
 - (ii) causes property to be given or transferred to any person; or
 - (iii) caused or was a party to any execution being levied against any property of the foreign enterprise,

commits an offence.

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Penalty: A fine not exceeding K100,000.00 or imprisonment for a term not exceeding two years, or both.”

27. REPEAL OF SECTION 42.

Section 42 of the Principal Act is repealed.

28. REPEAL OF SECTION 43.

Section 43 of the Principal Act is repealed.

29. NEW SECTION 44AA.

The Principal Act is amended by inserting immediately after Section 44A the following new section:

“44AA. REGULATIONS PRESCRIBING RESERVED AND RESTRICTED ACTIVITIES.

(1) The Regulations may prescribe -

(a) the activities that form the Reserved Activities List; and

(b) the activities that form the Restricted Activities List, including the conditions that apply to each restricted activity.

(2) For the avoidance of doubt, Regulations made under Section 44 for the addition, removal, or amendment to the Reserved Activities List or Restricted Activities List must be made in accordance with Section 27C and Section 27D.

(3) The Authority must ensure any Regulations in force that prescribe the Reserved Activities List or the Restricted Activities List are published within five working days on an internet site maintained by the Authority to which members of the public have access.”

30. SCHEDULE 1 (AMENDMENT OF SCHEDULE 1).

Schedule 1 of the Principal Act is amended -

(a) by deleting the full stop after “*Trade Marks Act* (Chapter 385)” and replacing it with “;” and

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(b) by inserting, immediately after “*Trade Marks Act* (Chapter 385)” the following:

“*Personal Property Security Act 2011*.”

I hereby certify that the above is a fair print of the *Investment Promotion (Amendment) Act 2023*, which has been made by the National Parliament.



Acting Clerk of the National Parliament.

29 MAY 2023

I hereby certify that the *Investment Promotion (Amendment) Act 2023*, was made by the National Parliament on 11 January 2023.



Speaker of the National Parliament.

29 MAY 2023