



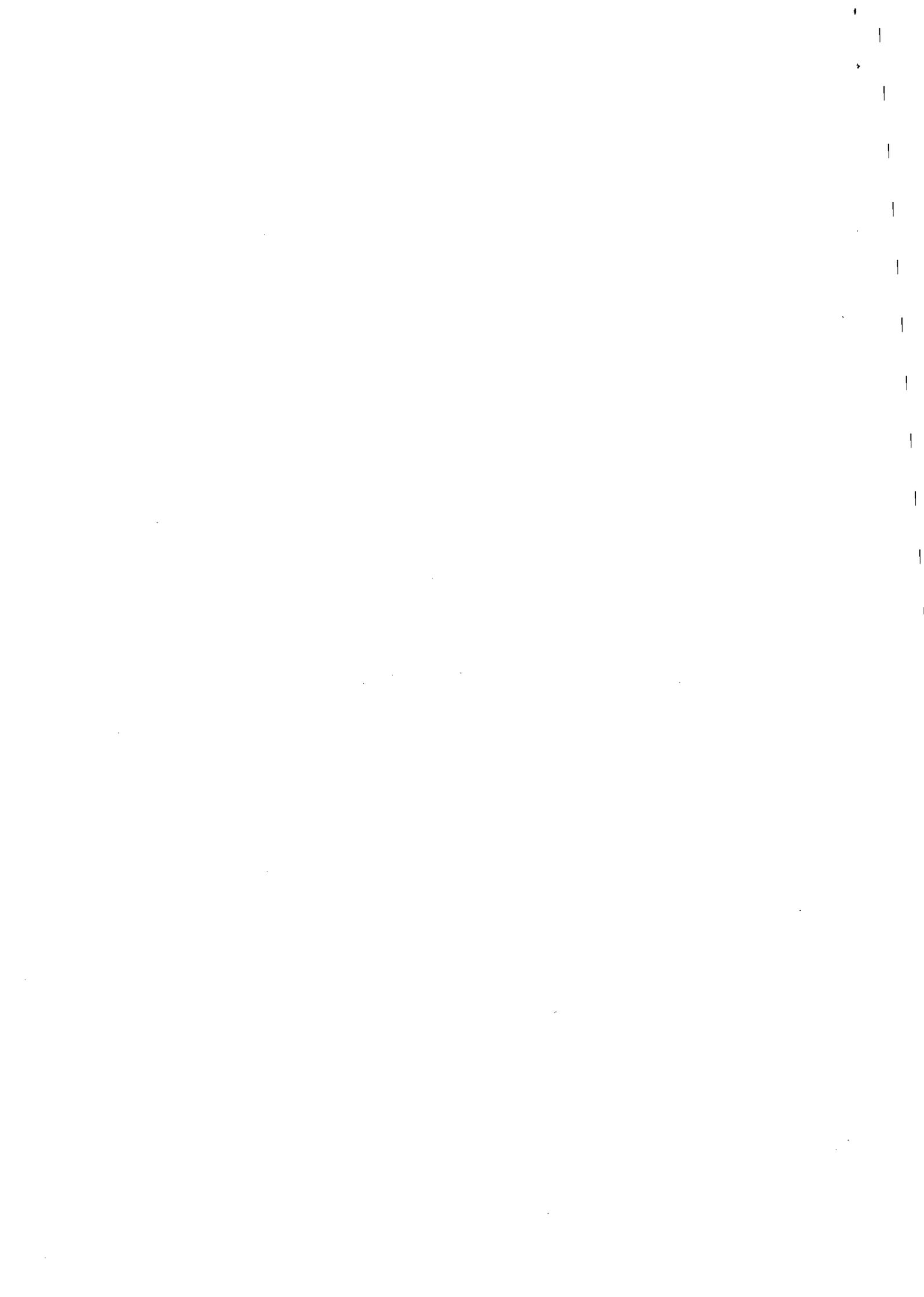
No. 17 of 1994.

Investment Promotion (Amendment) Act 1994.

Certified on : 11.8.94

IN FORCE ON: 29.9.94 478 (29.9.94)

(All sections except Section 18)



INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1994.

Investment Promotion (Amendment) Act 1994.

ARRANGEMENT OF SECTIONS.

1. Compliance with Constitutional requirements.
2. Purposes of Act (Amendment of Section 1).
3. Interpretation (Amendment of Section 3).
4. Functions of the Investment Promotion Authority (Amendment of Section 6).
5. Board for the Investment Promotion Authority (Amendment of Section 8).
6. Membership of the Board (Amendment of Section 9).
7. Reports (Amendment of Section 18).
8. Functions of the Managing Director (Amendment of Section 20).
9. Certification (Amendment of Section 25).
10. New Section 25A.

"25A. MINISTER MAY DECLARE ENTERPRISE TO BE A FOREIGN ENTERPRISE".
11. Repeal and replacement of Section 26.

"26. EXEMPTION".
12. Application for Certification (Amendment of Section 28).
13. Certificate (Amendment of Section 29).
14. Repeal and replacement of Section 32.

"32. CHANGE OF OWNERSHIP OF AN ENTERPRISE".
15. Variation (Amendment of Section 33).
16. Register of Foreign Investment opportunities (Amendment of Section 34).
17. Repeal and replacement of Section 36.

"36. CANCELLATION AND SUSPENSION OF CERTIFICATION".
18. New Part IV A.

"IV A. CERTIFICATION TO PARTICIPATE IN A NATIONAL ENTERPRISE".

"36A. CERTIFICATION".

"36B. ACQUISITION OF RELEVANT INTEREST".

"36C. APPLICATION FOR CERTIFICATION".

- "36D. DUTIES OF AUTHORITY IN RESPECT OF APPLICATION UNDER THIS PART".
 - "36E. CERTIFICATE".
 - "36F. VARIATION".
 - "36G. TRANSITIONAL".
19. Repeal and replacement of Section 40.
- "40. APPEAL FROM A DECISION OF THE BOARD OF THE AUTHORITY".
20. Offences (Amendment of Section 41).
21. New Section 41A.
- "41A. CONTRACT TO BE UNLAWFUL AND VOID IN CERTAIN CIRCUMSTANCES".
22. New Section 41B.
- "41B. GENERAL PENALTY, ETC.,".
23. Information (Amendment of Section 42).
24. Prosecution (Amendment of Section 44).
25. New Section 44A.
- "44A. PROSECUTIONS".
26. New Section 44B.
- "44B. CONFIDENTIALITY".
27. Saving of existing exemption, registration, etc., (Amendment of Section 54).
28. Amendment to the Schedule.
29. Savings and transitional.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1994.

AN ACT

entitled

Investment Promotion (Amendment) Act 1994.

Being an Act to amend the *Investment Promotion Act 1992*,

MADE by the National Parliament to come into effect 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. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely -

- (a) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*; and
- (c) the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public welfare and in the development of under privileged and less advanced groups.

(2) For the purposes of Section 29 of the *Organic Law on Provincial Government*, it is hereby declared that this law relates to a matter of national interest.

2. PURPOSES OF ACT (AMENDMENT OF SECTION 1).

Section 1 of the Principal Act is amended -

- (a) by repealing Paragraph (e) and replacing it with the following -
 - "(e) 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
 - (iv) assist in skills acquisition; or
 - (v) increase the volume and value of exports;

or

Investment Promotion (Amendment)

- (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"; and

(b) by inserting after Paragraph (e) the following Paragraph:-

"(ea) to monitor the impact of investment and the activities of enterprises;"

3. INTERPRETATION (AMENDMENT OF SECTION 3).

Section 3 of the Principal Act is amended -

(a) in Subsection (1) -

(i) 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) 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;" and

(ii) in the definition of "carrying on business" -

(A) by repealing Paragraph (a) and replacing it with the following:-

"(a) making application for any permit, licence, lease or authority issued for commercial purposes by the State or by a State body; or"; and

(B) by repealing Paragraph (c) and replacing it with the following:-

"(c) 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"; and

Investment Promotion (Amendment)

(iii) in the definition of "certificate", by adding the following:-

"or Section 36E"; and

(iv) by repealing the definition of "citizen" and replacing it with the following:-

"'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;"; and

(v) by repealing the definition of "foreign enterprise" and replacing it with the following:-

"'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."; and

(vi) in the definition of "national enterprise", by inserting after the word "between" (second occurring) the following:-

"the shareholders or"; and

(vii) by inserting after the definition of "officer" the following:-

"'repealed Act' means the *National Investment and Development Act* (Chapter 120) (repealed);"; and

"(b) by repealing Subsection (2) and replacing it with the following:-

"(2) 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."; and

"(c) by adding the following Subsection:-

"(3) 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 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."

Investment Promotion (Amendment)

4. FUNCTIONS OF THE INVESTMENT PROMOTION AUTHORITY (AMENDMENT OF SECTION 6).

Section 6 of the Principal Act is amended -

(a) by inserting after the word "Council" the following:-

"or the Minister"; and

(b) by inserting after Paragraph (d) the following new Paragraph:-

"(da) 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;"

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

Section 8 of the Principal Act is amended by adding the following

Subsections:-

"(3) 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) 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."

6. MEMBERSHIP OF THE BOARD (AMENDMENT OF SECTION 9).

Section 9(1)(a) of the Principal Act is repealed and is replaced with the following:-

"(a) the Departmental Head of the Department responsible for industry and commerce matters or his nominee, *ex officio*;"

7. REPORTS (AMENDMENT OF SECTION 18).

Section 18(1)(a) of the Principal Act is amended by repealing the figures and word "15 February" and replacing them with the following:-

"15 March".

8. FUNCTIONS OF THE MANAGING DIRECTOR (AMENDMENT OF SECTION 20).

Section 20 of the Principal Act is amended by adding the following subsection:-

"(3) 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."

9. CERTIFICATION (AMENDMENT OF SECTION 25).

Section 25 of the Principal Act is amended -

(a) in Subsection (1), by repealing the words "in an activity"; and

(b) in Subsection (2), by repealing the words "in an activity"; and

Investment Promotion (Amendment)

(c) by adding the following Subsection:-

"(4) 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."

10. NEW SECTION 25A.

The Principal Act is amended by inserting after Section 25 the following new section:-

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

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."

11. REPEAL AND REPLACEMENT OF SECTION 26.

Section 26 of the Principal Act is repealed and is replaced with the following:-

"26. EXEMPTION.

(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 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)."

12. APPLICATION FOR CERTIFICATION (AMENDMENT OF SECTION 28).

Section 28 of the Principal Act is amended -

(a) by repealing Subsection (2) and replacing it with the following:-

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

(a) be in the prescribed form; and

(b) contain the prescribed particulars; and

Investment Promotion (Amendment)

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

(b) by inserting after Subsection (2) the following new subsection:-

“(2A) 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.”; and

(c) by repealing Subsection (4) and replacing it with the following:-

“(4) 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.”; and

(d) by inserting after Subsection (4) the following new subsection:-

“(4A) 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
- (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

Investment Promotion (Amendment)

- (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."; and
- (e) by inserting after Subsection (4A) the following new subsection:-

"(4B) 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."; and

- (f) by inserting after Subsection (4B) the following new subsection:-

"(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."; and

- (g) in Subsection (5), by deleting the figures "45" and replacing them with the following:-

"35 working"; and

- (h) by repealing Subsection (7) and replacing it with the following:-

"(7) 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"; and

- (i) by adding the following subsections:-

"(8) 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.

Investment Promotion (Amendment)

"(9) 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."

13. CERTIFICATE (AMENDMENT OF SECTION 29).

Section 29 (2)(b) of the Principal Act is amended -

(a) in Subsection (1), by repealing the words "in an activity"; and

(b) in Subsection (2)(b) -

(i) in Subparagraph (iii), by repealing the words "in an activity"; and

(ii) in Subparagraph (iv), by adding the following:-

"and conditions".

14. REPEAL AND REPLACEMENT OF SECTION 32.

Section 32 of the Principal Act is repealed and is replaced with the following:-

"32. CHANGE OF OWNERSHIP OF AN ENTERPRISE.

(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 3 of the *Companies Act* (Chapter 146).

"(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."

Investment Promotion (Amendment)

15. VARIATION (AMENDMENT OF SECTION 33).

Section 33(1)(c) of the Principal Act is amended by adding after the word "term" the following:-

"or condition".

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

Section 34 of the Principal Act is amended -

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

"(1) 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."; and

(b) by repealing Subsection (4); and

(c) in Subsection (5), by repealing the words "in an activity"; and

(d) by repealing Subsection (8) and replacing it with the following:-

"(8) The Register of Foreign Investment Opportunities shall be open for inspection during normal business hours.".

17. REPEAL AND REPLACEMENT OF SECTION 36.

Section 36 of the Principal Act is repealed and is replaced with the following:-

"36. CANCELLATION AND SUSPENSION OF CERTIFICATION.

(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 -

Investment Promotion (Amendment)

- (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."

18. NEW PART IVA.

The Principal Act is amended by inserting after Part IV the following new Part:-

"IVA. CERTIFICATION TO PARTICIPATE IN A NATIONAL ENTERPRISE.

"36A. CERTIFICATION.

(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.

(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.

Investment Promotion (Amendment)

"(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.

(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
- (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 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.

(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

Investment Promotion (Amendment)

- (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.

"(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 ten 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.

Investment Promotion (Amendment)

***36E. CERTIFICATE.**

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

***36F. VARIATION.**

(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.**

(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."

Investment Promotion (Amendment)

19. REPEAL AND REPLACEMENT OF SECTION 40.

Section 40 of the Principal Act is repealed and is replaced with the following:-

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

- (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)."

20. OFFENCES (AMENDMENT OF SECTION 41).

Section 41 of the Principal Act is amended -

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

- "(1) 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 national enterprise without a certificate under Part IV or under Part IVA; or

Investment Promotion (Amendment)

(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 for each day the offence continues."; and

(b) by inserting after Subsection (1) the following new subsection:-

"(1A) 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 for each day the offence continues; and

(c) in Subsection (4) -

(i) in Paragraph (a), by inserting after the word "term" the following:-

"or condition"; and

(ii) in Paragraph (b), by repealing the words "class of".

21. NEW SECTION 41A.

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

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

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."

22. NEW SECTION 41B.

The Principal Act is amended by inserting after Section 41A the following new section:-

"41B. GENERAL PENALTY, ETC.,

(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.

Investment Promotion (Amendment)

"(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."

23. INFORMATION (AMENDMENT OF SECTION 42).

Section 42 of the Principal Act is amended -

(a) in Subsection (1), by adding the following:-

"and specifying the place and time at which any information, books and records are to be furnished or produced."; and

(b) by repealing Subsection (2) and replacing it with the following:-

"(2) 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 the Authority."; and

(c) by adding the following Subsection:-

"(7) 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)."

24. PROSECUTION (AMENDMENT OF SECTION 44).

Section 44 of the Principal Act is amended by repealing the heading and replacing it with the following:-

"REGULATIONS".

25. NEW SECTION 44A.

Part VII of the Principal Act is amended by inserting after Section 44 the following new section:-

"44A. PROSECUTIONS.

(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.

Investment Promotion (Amendment)

"(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."

26. NEW SECTION 44B.

Part VII of the Principal Act is amended by inserting after Section 44A the following new section:-

"44B. CONFIDENTIALITY.

(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.

"(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."

27. SAVING OF EXISTING EXEMPTION, REGISTRATION, ETC., (AMENDMENT OF SECTION 54).

Section 54 of the Principal Act is amended by adding the following new subsection:-

"(4) 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."

28. AMENDMENT TO THE SCHEDULE.

The Schedule to the Principal Act is amended:

- (a) by repealing the words "*Land Groups Incorporation Act* (Chapter 147)"; and

Investment Promotion (Amendment)

(b) by adding the following:-

" *Trade Marks Act* (Chapter 385)".

29. SAVINGS AND TRANSITIONAL.

(1) Notwithstanding the coming into operation of this Act, the provisions of Section 40(1) of the Principal Act immediately before that coming into operation, so far as relating to the period within which an appeal is to be made, shall continue to apply in respect of -

(a) notices of refusal given; or

(b) expiration of period,

prior to that coming into operation.

(2) An appeal made under Section 40 of the Principal Act before the coming into operation of this Act and not determined prior to that coming into operation shall be determined in accordance with Section 40 of the Principal Act as repealed and replaced by this Section 19 of this Act, but any procedure relating to the appeal carried out prior to the coming into operation of this Act shall be deemed to be the equivalent procedure carried out under Section 40 of the Principal Act as repealed and replaced by this Act.

(3) Notwithstanding the coming into operation of this Act, where immediately before the coming into operation of this Act, the Minister had given written notice under Section 36(1) of the Principal Act to a foreign enterprise, the procedure relating to that notice, to any reply thereto and to any notice in respect of such reply will be the procedure as specified in Section 36 immediately before the coming into operation of this Act.

I hereby certify that the above is a fair print of the *Investment Promotion (Amendment) Act* 1994 which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Investment Promotion (Amendment) Act* 1994 was made by the National Parliament on 8 June 1994 by an absolute majority in accordance with the Constitution.

Speaker of the National Parliament.