

No. 19 of 2019.

*Special Economic Zones Authority Act 2019.*

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No. 19 of 2019.

*Special Economic Zones Authority Bill 2019.*

**ARRANGEMENT OF SECTIONS.**

**PART I. - PRELIMINARY.**

1. Compliance with constitutional requirements.
2. Purpose of this Act.
3. Interpretation -
  - “applicant”
  - “asset”
  - “Authorised Economic Activity”
  - “Authorised Officer”
  - “Authority”
  - “Board”
  - “Chairman”
  - “Chief Executive Officer”
  - “citizen”
  - “claimant”
  - “competent agency”
  - “developer”
  - “Development Agreement”
  - “Development and Operator Agreement”
  - “dispute”
  - “domestic customs territory”
  - “enterprise”
  - “export charge”
  - “expropriation”
  - “Free Trade Zone”
  - “final determination”
  - “foreign enterprise”
  - “foreign national”
  - “Government”
  - “import charge”
  - “infrastructure”
  - “international selection process”
  - “Memorandum of Understanding”
  - “migration laws”
  - “Minister”
  - “national enterprise”
  
  - “off-site infrastructure”

- “one-stop-shop”
- “on-site infrastructure”
- “operator”
- “Operator Agreement”
- “person”
- “register”
- “Special Economic Zone”
- “Special Economic Zone Enterprise”
- “Special Economic Zone Investment
- “Special Economic Zone Investor”
- “Special Economic Zone Lands”
- “Special Economic Zone License”
- “Special Economic Zone Licensee”
- “Special Economic Zone User”
- “Special Economic Zone User License”
- “subcontractor”
- “this Act”

4. Act binds the State.
5. Application.

## **PART II. - INSTITUTIONAL ARRANGEMENTS.**

6. Establishment of the Special Economic Zones Authority.
7. The funds of the Authority.
8. Establishment of SEZA Education and Innovation Fund.
9. Special Economic Zone Investment.
10. Special Economic Zone.
11. Application of *Public Finances (Management) Act 1995*.
12. Application of the *Audit Act 1989*.
13. Books, records and reports, etc.
14. The employees of the Authority.

## **PART III. - THE AUTHORITY FUNCTIONS, POWERS, ETC..**

15. The functions of the Authority.
16. The powers of the Authority.
17. Authority subsidiary.
18. Authority policy on banks.
19. Representation of the Authority.
20. Special Economic Zone register.

## **PART IV. - BOARD AND CHIEF EXECUTIVE OFFICER.**

21. Board of the Authority.
22. Functions of the Board.
23. Membership of the Board.
24. Ineligibility to be a member of the Board.
25. Chairman and Deputy Chairman.
26. Termination of membership.
27. Vacancy not to affect powers or functions.

28. Meetings and procedure of the Board.
29. Board procedure.
30. Disclosure of interests by members of the Board.
31. Committees of the Board.
32. Fees and expenses.
33. Reports.
34. Chief Executive Officer.

#### **PART V. - PROTECTION OF AUTHORITY'S INTEGRITY.**

35. Code of conduct.
36. Conflict of interest.
37. Confidential information.

#### **PART VI. - ONE- STOP -SHOP.**

38. One-Stop-Shop.
39. Coordination with competent agency.
40. Cooperation by competency agency.

#### **PART VII. - ESTABLISHMENT OF SPECIAL ECONOMIC ZONES.**

41. Establishment of Special Economic Zones.
42. Evaluation criteria for the establishment of Special Economic zones.

#### **PART VIII. - ISSUE OF SPECIAL ECONOMIC ZONE LICENCES AND DEVELOPMENT AND OPERATION OF SPECIAL ECONOMIC ZONES.**

43. Issuance of Special Economic Zone licence.
44. Special Economic Zone licence application requirements and eligible applicants.
45. Assignment of rights.
46. Developer rights.
47. Developer obligations.
48. Operator rights.
49. Operator obligations.
50. Additional performance requirements for developers and operators.
51. Revocation of Special Economic Zone licence.

#### **PART IX. - SPECIAL ECONOMIC ZONE LANDS.**

52. Acquisition of land by the Authority.
53. Approval by the Authority of other lands.
54. No transfer of Special Economic Zone land.

#### **PART X. - SPECIAL ECONOMIC ZONE USERS.**

55. User licence.
56. Special Economic Zone user rights.
57. Special Economic Zone user obligations.
58. Revocation, Suspension or cancellation of Special Economic Zone licences.
59. Voluntary suspension of Special Economic Zone users activities.



**PART XI. - TAXATION OF SPECIAL ECONOMIC ZONE ENTERPRISES.**

60. Taxation of Special Economic Zone enterprises.

**PART XII. - APPLICATION OF CUSTOMS LAWS.**

61. Duty free export and import.
62. Customs controlled areas.
63. Customs requirements governing goods entering and exiting the Special Economic Zone.

**PART XIII. - ENVIRONMENT, EMPLOYMENT AND IMMIGRATION.**

64. Special Economic Zone environmental responsibility.
65. Special Economic Zone employment responsibility.
66. Special Economic Zone immigration responsibility.

**PART XIV. - INVESTOR RIGHTS AND GUARANTEES.**

67. Special economic zone investor rights and guarantees..
68. Further incentives.
69. Record of incentives.

**PART XV. - SETTLEMENT OF DISPUTES.**

70. Administrative dispute, etc.
71. Dispute by Special Economic Zone investor.
72. Settlement of disputes.

**PART XVI. - ENFORCEMENT.**

73. Offences.
74. Power of seizure, etc.
75. Entry and inspection on land.
76. Award of damages.
77. Presumption as to property in Special Economic Zone.
78. Conduct of proceedings.

**PART XVII. - MISCELLANEOUS.**

79. Protection of officers.
80. Indemnity of member of the Board, etc.

**PART XVIII. - REPEAL.**

81. Repeal.
82. State charges.
83. Regulations.

**SCHEDULE 1.**

**SCHEDULE 2.**

**SCHEDULE 3.**

**SCHEDULE 4.**



No. 19 of 2019.

AN ACT

Entitled

***Special Economic Zones Authority Act 2019.***

Being an Act to enable the establishment, development, operation and regulation of Special Economic Zones in Papua New Guinea, to encourage the development of new and additional business activity in Special Economic Zones under a streamlined regulatory framework and to create a Special Economic Zones Authority to develop and regulate Special Economic Zones including the selection of sites development and operation 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. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

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

- (a) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (b) the right to freedom of expression and publication conferred by Section 46; and
- (c) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48; and
- (d) the right to reasonable privacy conferred by Section 49; and
- (e) the right to reasonable access to official documents conferred by section 51; and
- (f) the right of freedom of movement conferred by Section 52, of the *Constitution*, is a law made (pursuant to section 38 of the *Constitution*), taking account of the National Goals and Directive Principles and the Basic Social Obligations, in particular the National Goals and directive principles entitled -
  - (i) national sovereignty and self-reliance; and
  - (ii) national resources and environment, for the purpose of giving effect to the public interest, public order and public welfare.

(2) For the avoidance of doubt, and for the purposes of Section 41(2) of the *Organic Law on Provincial Governments and Local-level Government*, it is declared that this Act relates to matters of national interest.

**2. PURPOSE OF THIS ACT.**

The purposes of this Act are -

- (a) to establish a single national framework for the coordinated establishment, development and operation of multi-use Special Economic Zones in Papua New Guinea; and

## *Special Economic Zones Authority*

- (b) to establish the Special Economic Zones Authority as the single national developer and regulator for Special Economic Zones in Papua New Guinea; and
- (c) to provide for the Special Economic Zones Authority to be the facilitator for the creation, establishment, development, operation, maintenance and promotion of Special Economic Zones; and
- (d) to provide for streamlined, effective, efficient and timely government services to businesses in Special Economic Zones; and
- (e) to strengthen the economy by creating a business environment that will encourage domestic and foreign investment in Papua New Guinea, including linkages between businesses inside and outside Special Economic Zones whilst protecting the environment, water supply, natural resources, biological diversity, labour resources, and public health, safety, and welfare consistent with national laws and commitments under international conventions; and
- (f) to promote employment growth and the development of skills and expertise in the citizen labour force; and
- (g) to promote transfer and development of new technology within the Special Economic Zones; and
- (h) to promote the development and improvement of infrastructure in Special Economic Zones; and
- (i) to encourage private sector and sustainable development; and
- (j) to encourage SME to SME and cottage industries growth around Special Economic Zones; and
- (k) to encourage industrialisation via manufacturing and downstream processing to meet domestic needs and to increase exports.

### 3. **INTERPRETATION.**

In this Act, unless the context otherwise requires -

“applicant” means any Enterprise that applies for a license to establish, develop, operate, maintain, or promote a Special Economic Zone;

“asset” means all public and private property rights and interests relating to a Special Economic Zone in Papua New Guinea, whether movable or immovable, tangible or intangible, including, but not limited to, Special Economic Zone Lands, buildings, structures, easements, plant and equipment, machinery, furniture, vehicles, Infrastructure, improvements, intellectual property rights, other installations, contracts, and any other asset prescribed in this Act;

“authorised economic activity” means any lawful economic activity that a Special Economic Zone Enterprise is authorized to carry out in a Special Economic Zone that -

(a) does not contravene any law concerning public morality or order, public safety or security, or public hygiene or health; and

(b) does not endanger human or animal health or life; and

(c) does not violate any vested intellectual property rights; and

“Authority” means the Special Economic Zones Authority established under Section 6;

“Authorised Officer” means a person employed by or authorized to do a certain act consistent with this Act by the Authority and includes a member of the Board, Committee, agent or representative;

“Board” means the Board of Directors of the Authority;

“Chairman” means Chairman of the Board of the Authority;

## *Special Economic Zones Authority*

- “Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under Section 34;
- “citizen” refers to a national from Papua New Guinea and otherwise has the same meaning as in the *Investment Promotion Authority Act 1992*;
- “claimant” means a person, including a Special Economic Zones Investor, who has a dispute before any competent administrative, judicial, or arbitration tribunal;
- “competent agency” means a government or statutory body having regulatory jurisdiction over a particular site or activity within a Special Economic Zone; “Customs Laws” means and includes the *Customs Tariff Act 1990* and any other Acts and Regulations concerning customs administration that may be enforceable from time to time;
- “developer” means an Enterprise that designs, constructs, and develops a Special Economic Zone pursuant to a Development Agreement;
- “Development Agreement” means an agreement executed by the Authority and a Developer pursuant to which a Developer designs, constructs, and develops a Special Economic Zone, including the development and servicing of Special Economic Zone Lands, the construction of Infrastructure, and the provision of other services related to the Special Economic Zone;
- “Development and Operator Agreement” means an agreement that combines the legal rights and obligations of both a Development Agreement and an Operator Agreement in one contract;
- “dispute” means an administrative, civil, or commercial challenge, claim, legal claim, tort claim, or contract claim that directly or indirectly arises under, out of, in relation to, in connection with, or regarding this Act, the Regulations or a Special Economic Zone Investment, including the interpretation and the application of the provisions of this Act, as well as to any breach, violation, or termination of any agreement executed pursuant to this Act;
- “domestic customs territory” means the geographical area of the national territory of Papua New Guinea situated outside any Special Economic Zone;
- “enterprise” has the same meaning as in the *Investment Promotion Authority Act 1992*;
- “export charge” means any customs duty, levy, or other charge not constituting a direct or indirect tax that is assessed and collected on exports;
- “expropriation” means the taking, nationalization, condemnation, expropriation, or any action taken by the Government having a confiscatory effect of private property rights or interests carried out for any public purpose, including establishing a Special Economic Zone, by any Competent Authority in accordance with the Constitution, this Act, or any law authorizing expropriation;
- “Free Trade Zone” means a class of Special Economic Zone, as determined by the Special Economic Zone authority, including but not limited to a geographic area where goods may be landed, stored, handled, manufactured or reconfigured and re-exported under specific customs regulation and generally not subject to customs duty;
- “final determination” means a final administrative determination issued by the Authority under Section 46, 48 and 56 of this Act;
- “foreign enterprise” has the same meaning as in the *Investment Promotion Authority Act, 1992*;
- “foreign national” means a natural person who is a national of a foreign country;
- “Government” means -



## *Special Economic Zones Authority*

- (a) the executive branch of the National Government (including any ministry, department, agency, institution, department, organization, or authority, including the Authority, that exercises executive powers under the Constitution or under an Act; and
  - (b) a Provincial Government; and
  - (c) a Local-level Government; and
- “import charge” means any tariff, customs duty, levy, or other charge not constituting a direct or indirect tax that is assessed and collected on imports;
- “infrastructure” means the basic physical facilities, installations, and utilities and related services, and services, needed to facilitate Special Economic Zone development and activity and includes, but is not limited to, roads, dams, reservoirs, bridges, drainage facilities, sewers, fences, electricity generation equipment, wastewater and refuse treatment facilities, solid-waste disposal systems, transportation networks, and other land improvements prescribed in the Regulations, water distribution and telecommunications;
- “international selection process” means the process whereby the Authority will procure the appointment of a Developer or Operator (or Developer and Operator as the case may be) of a Special Economic Zone through public tender which may include advertisement in the international media;
- “Memorandum of Understanding” means an administrative legal instrument executed by the Authority and any Competent Agency that sets out the rules, procedures, formalities, technical operating standards, performance requirements, and scope of authority pursuant to which the Authority and each Competent Agency coordinates its respective powers, duties, and functions with regard to a Special Economic Zone;
- “migration laws” means the *Migration Act 1978* and any other Acts and Regulations concerning migration matters that may be enforceable from time to time;
- “Minister” means the Minister for Finance matters determined by the Prime Minister;
- “off-site infrastructure” means Infrastructure provided outside the perimeter of any Special Economic Zone and includes public-utility, transport, and other Infrastructure connections to a Special Economic Zone;
- “national enterprise” has the same meaning as in the *Investment Promotion Act 1992*
- “one stop shop” means an administrative coordination facility established and implemented by the Authority at each Special Economic Zone site and which is designed to facilitate the development, operation, and regulation of each Special Economic Zone for the benefit of Special Economic Zone Licensee, Developers, Operators, and Special Economic Zone Users;
- “on-site infrastructure” means infrastructure provided inside the perimeter of a Special Economic Zone;
- “operator” means an enterprise that operates, maintains, and promotes a Special Economic Zone in accordance with an Operator Agreement;
- “Operator Agreement” means an agreement executed by the Authority and an Operator pursuant to which an Operator operates, maintains, and promotes a Special Economic Zone;
- “person” means a private natural person or an Enterprise;
- “register” means the Special Economic Zone register established under Section 20 of this Act;

## *Special Economic Zones Authority*

- “Special Economic Zone” means any delimited and declared geographic area comprising serviced lands that is designated as a Special Economic Zone under this Act, that has on-site single administrative regulation, management, infrastructure and related services and is dedicated to any multi-use authorized economic activity and includes Free Trade Zone (Commercial Free Zone), Export Processing Zone, Freeport, Enterprise Zone, Empowerment Zone, Urban Free Zone, Single Factory Zone, Marine Industrial Zone, Specialized Zones including Science technology parks, petrochemical zones, logistics parks, airport based zone, and such other variant of a Special Economic Zone;
- “Special Economic Zone Enterprise” means the holder of a Special Economic Zone License under Section 43 of this Act;
- “Special Economic Zone Investment” means the acquisition or creation by a Special Economic Zone Investor of a new Asset (including the expansion, restructuring, or rehabilitation of an existing Enterprise to operate as a Special Economic Zone Enterprise in accordance with the requirements prescribed in this Act) that a Special Economic Zone Investor owns, possesses, or controls, whether directly or indirectly, and that has the characteristics of a new investment, including such features as the commitment of new capital or other resources, the expectation of gain or profit, or the assumption of risk and includes -
- (a) a Special Economic Zone Enterprise; and
  - (b) shares, stock, and other forms of equity or ownership participation in a Special Economic Zone Enterprise; and
  - (c) bonds, debentures, loans, and other debt instruments (excluding debt instruments executed with a public entity), and other credit instruments; and
  - (d) futures, options, and other derivatives; and
  - (e) legal rights under a contract or agreement relating to any Asset of a Special Economic Zone Investor, including turnkey, construction, development, management, operation, production, or revenue-sharing contracts and, in particular, a Development or Operator Agreement; and
  - (f) intellectual property rights, including patents, copyrights, trademarks, and service marks; and
  - (g) any rights conferred under law, such as authorizations, permits, and Licenses, including a Special Economic Zone License; and
  - (h) other related private property rights, such as leases, mortgages, liens, pledges, and any other real property rights; and
  - (i) any other forms of investment prescribed by this Act; and
- “Special Economic Zone Investor” means a Person, whether a citizen or foreign nationality, including a Special Economic Zone User /Enterprise, that attempts to make, is making, or has made a Special Economic Zone Investment;
- “Special Economic Zone Lands” means land acquired by the Authority or approved by the Authority for the purposes of establishment, development and promotion of a Special Economic Zone;
- “Special Economic Zone License” means a license issued under Section 43 of this Act;
- “Special Economic Zone Licensee” means an Enterprise that is the holder of a Special Economic Zone License;
- “Special Economic Zone User” means a private Enterprise that is the holder of a Special Economic Zone User License;
- “Special Economic Zone User License” means a license issued under Section 43 of this Act;

## *Special Economic Zones Authority*

“Subcontractor” means a third-party developer or operator or any person engaged under a contract or agreement to perform subcontracting services;  
“this Act” includes the Regulations.

### **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 or the National Executive Council, may give directions to the Authority as to policy, any such directions may not be inconsistent with the provisions of this Act.

### **5. APPLICATION.**

This Act applies to all Special Economic Zones in Papua New Guinea.

## **PART II. - INSTITUTIONAL ARRANGEMENTS.**

### **6. ESTABLISHMENT OF THE SPECIAL ECONOMIC ZONES AUTHORITY.**

(1) The Special Economic Zones Authority is hereby established.

(2) The Special Economic Zones Authority -

(a) is the only regulator for Special Economic Zones in Papua New Guinea; and

(b) is an independent body corporate with perpetual succession; and

(c) is part of the National Public Service; and

(d) shall have a common seal; and

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

(f) may sue and be sued in its corporate name and style; and

(g) and may do all such things incidental or conducive to the exercise or performance of its functions under this Act, including the lending or borrowing of money.

(3) The common seal of the Authority may not be affixed to any document or instrument except pursuant to a resolution of the Board.

(4) The affixation of the common seal of the Authority is to be attested by any two members of the Board.

(5) 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, unless the contrary is proved, that the seal was properly affixed.

### **7. THE FUNDS OF THE AUTHORITY.**

(1) The funds of the Authority shall consist of any monies appropriated by law for the purpose of carrying out or giving effect to this Act and any monies received in accordance with law, including -

(a) all monies received by the Authority from the general budget of Government and by way of grants and subscriptions; and

(b) all monies received by the Authority for services provided by the Authority; and

## *Special Economic Zones Authority*

- (c) all monies received in respect of rents, fees, fines, and penalties collected under this Act, including income received from the disposition of the Authority assets, fees charged under any lease agreement executed by the Authority, or fees assessed for services provided by the Authority in a Special Economic Zone; and
- (d) any monies received in respect of payments from administrative determinations or other settlements for offences, or related costs, and other payments received; and
- (e) all monies received by the Authority in respect of sale of real or personal property owned by the Authority or monies received through trading activities or investments of the Authority; and
- (f) fifty percent of total customs import and export duty revenue collected annually by the Internal Revenue Commission including the PNG Customs Service with respect to Special Economic Zone trade with the domestic customs territory which shall be allocated to the Authority; and
- (g) loans sourced either within or outside of Papua New Guinea; and
- (h) financial returns realised by the Authority from any investments made in income generating instruments, such as term deposits.

(2) The Authority's funds shall 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) in payment for training courses for employees; and
- (d) in payment for rewards for information leading to convictions for offences under this Act in accordance with such requirements as may be prescribed; and
- (e) funding the infrastructure development plan within the zone(s); and
- (f) for such other purposes as are consistent with the functions of the Authority as the Board, after consultation with the Chief Executive Officer, shall determine.

(3) The Board, on the recommendation of the Chief Executive Officer shall approve in advance of the commencement of each year a budget consisting of an estimate of expected revenues and expenditures for the Authority, and the Authority shall be entitled to retain and utilise monies collected pursuant to Subsection (1) up to the level of the estimate of the expected expenditure approved by the Board for the purpose of achieving the efficient management of the Authority, including for the purpose of capital expenditure, but otherwise any excess shall be paid into Consolidated Revenue.

(4) The Chief Executive Officer shall, within sixty days after the sixth month of a fiscal year, submit to the Board for review of the revenue and expenditure report for the first six months of the fiscal year of the budget in accordance with Subsection (1), which shall compare such revenue and expenditures with the budget approved under Subsection (3).

### **8. ESTABLISHMENT OF SEZA EDUCATION & INNOVATION FUND.**

(1) The SEZA Education and Innovation Fund is established.

(2) The Authority shall manage, control and use the funds for education and innovative technology related matters.

### **9. SPECIAL ECONOMIC ZONE INVESTMENT.**

(1) A special economic zone investment is the acquisition or creation of a new asset including the -



## *Special Economic Zones Authority*

- (a) expansion; or
- (b) restructuring; or
- (c) rehabilitation, of an existing enterprise to operate as a special economic zone enterprise in accordance with the requirements prescribed in this Act.

(2) A special economic zone investment referred to in Subsection (1) belongs to the investor and the investor owns, possesses, or controls the acquisition or creation of the new asset directly or indirectly.

(3) The acquisition or creation of the asset shall have the characteristics of a new investment including -

- (a) such features as the commitment of new capital or other resources; or
- (b) the expectation of gain or profit; or
- (c) the assumption of risk, and includes -
  - (i) a special economic zone enterprise; and
  - (ii) shares, stock, and other forms of equity or ownership participation in a special economic zone enterprise; and
  - (iii) bonds, debentures, loans, and other debt instruments (excluding debt instruments executed with a public entity), and other credit instruments; futures, options, and other derivatives; and
  - (iv) legal rights under a contract or agreement relating to any asset of a Special Economic Zone investor, including turnkey, construction, development, management, operation, production, or revenue-sharing contracts and, in particular, a development or operator agreement; and
  - (v) intellectual property rights, including patents, copyrights, trademarks, and service marks; and
  - (vi) any rights conferred under law, such as authorizations, permits, licences, including a special economic zone licence; and
  - (vii) other related private property rights, such as leases, mortgages, liens, pledges, and any other real property rights; and
  - (viii) any other forms of investment prescribed by this Act specifically related to fintech, blockchain, cryptocurrency initial coin or token offerings and any other virtual financial assets.

### **10. SPECIAL ECONOMIC ZONE.**

(1) A special economic zone is any delimited geographic area -

- (a) that is designated as a special economic zone under this Act; and
- (b) has an on-site single administrative regulation, management, infrastructure, and related services.

(2) The special economic zone shall be dedicated to any multi-use authorized economic activity, including but not limited to -

- (a) a free trade zone (commercial zone); and
- (b) export processing zone; and
- (c) free port zone; and
- (d) enterprise zone; and
- (e) tourism zone; and
- (f) single factory zone; and

*Special Economic Zones Authority*

- (g) marine industrial zone; and
- (h) science or technology parks; and
- (i) petroleum park; and
- (j) logistics parks; and
- (k) airport free zone; and
- (l) forestry park; and
- (m) industrial park; and
- (n) agriculture park; and
- (o) arts and crafts park; and
- (p) such other variant of a special economic zone.

**11. APPLICATION OF PUBLIC FINANCES (MANAGEMENT) ACT 1995.**

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

**12. APPLICATION OF THE AUDIT ACT 1989.**

The accounts of the Authority shall be audited in accordance with Part III of the *Audit Act 1989*.

**13. BOOKS, RECORDS AND REPORTS, ETC.**

(1) The Authority shall have the same fiscal year as the National Government.

(2) The Authority shall maintain such books, records, and accounts as required by a company incorporated under the *Companies Act 1997*.

(3) The books and records maintained by the Authority shall be kept by the Authority for a period of seven (7) years.

(4) The Board and Chief Executive Officer shall ensure at all times that the Authority books, records, and accounts, including financial statements, are prepared and maintained in conformity with international financial reporting standards, including the use of full accrual accounting on a daily basis.

(5) The Board shall appoint a certified public accountant to control and audit its books, records, and accounts.

(6) The Authority shall publish on the official Authority website by 30 April of each calendar year annual financial statements as signed by the Chief Executive Officer and approved by the Board.

(7) Financial settlements published under Subsection (6) shall show the complete financial condition and performance of the Authority as of the last business day of the preceding calendar year.

**14. THE EMPLOYEES OF THE AUTHORITY.**

(1) The Authority shall employ such employees as it considers necessary to efficiently and effectively perform its functions under this Act.

(2) The Authority's employees shall be employed on the terms and conditions approved by the Board.

(3) An employee of the Authority is not a member or officer of the National Public Service.

**PART III. - THE AUTHORITY'S FUNCTIONS, POWERS, ETC.**

**15. THE FUNCTIONS OF THE AUTHORITY.**

The functions of the Authority are to -

- (a) regulate the establishment of Special Economic Zones in the country; and
- (b) regulate employment opportunities for citizens in Special Economic Zones; and
- (c) increase the supply of serviced lands for the establishment of Special Economic Zones either by acquiring land or approving such lands; and
- (d) promote the uniform and efficient development of multi-use Special Economic Zones; and
- (e) encourage the private sector to participate in the development, operation, and maintenance of Special Economic Zones, including the provision of Infrastructure; and
- (f) coordinate with the private sector to train and improve the capacity of the citizen workforce, while ensuring the protection of workers' rights; and
- (g) develop a high-quality business climate in each Special Economic Zone that protects the environment, water supply, natural resources, biological diversity, labour resources, and public health, safety and welfare, consistent with international conventions; and
- (h) to coordinate with Competent Agencies to provide incentives to attract foreign direct investment and other foreign enterprise to invest in the Special Economic Zone
- (i) to advise the Minister on any matter on functions of the Authority.

**16. THE 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) Without limiting its general power, the Authority has the power -
- (a) to formulate the national strategic policy for Special Economic Zones, including approving sites for Special Economic Zone development; and
  - (b) to authorise and regulate the establishment, development, operation, and maintenance of multi-use Special Economic Zones throughout the country in accordance with this Act; and
  - (c) to delegate Special Economic Zone development, operation, and maintenance powers in accordance with this Act; and
  - (d) to grant Special Economic Zone Licences, including to Special Economic Zone Users under Part X, as well as any other certificates, approvals, permits, and related authorisations; and
  - (e) to enter into and execute Development and Operator Agreements, in addition to any other agreements, contracts, or arrangements considered necessary under this Act, including revenue-sharing arrangements with any public authority; and
  - (f) to acquire land for the purpose of establishment of Special Economic Zones; and
  - (g) to enter into and conclude Memorandum of Understanding with any Competent Agency; and
  - (h) to approve the master development plan designed for a Licensed Special Economic Zone; and
  - (i) to issue the standard operating rules and procedures governing Special Economic Zones; and

## *Special Economic Zones Authority*

- (j) to revoke, cancel, rescind, suspend, withdraw, or modify any Special Economic Zone Licence or Development or Operator Agreement, as well as any other certificate, permit, authorization, approval, lease, or contract or agreement previously granted or executed by the Authority, in accordance with the criteria set out in this Act; and
- (k) to collect fees or payments for applications, licences, permits, authorisations, certificates, approvals, services, leases, or other contracts or agreements granted, provided, or entered into by the Authority under this Act; and
- (l) to prohibit or restrict in the Special Economic Zones any activities that contravene public morality, threaten public safety, order, security, hygiene, or health, endanger, human, animal, or plant health or life, or violate any intellectual property rights; and
- (m) to regulate all authorised economic activities including utilities and related services provided in the Special Economic Zones in accordance with this Act and any other laws; and
- (n) to delegate the power to issue Special Economic Zone User Licences under Part X for a Special Economic Zone to that Special Economic Zone's Operator.

### **17. AUTHORITY SUBSIDIARY.**

(1) The Authority may incorporate a subsidiary company subject to prior approval of the Minister responsible.

(2) The subsidiary company shall have all the powers of a company under the *Companies Act 1997*.

(3) The Board of the Authority shall determine the composition of the Board of Directors for a subsidiary company.

### **18. AUTHORITY POLICY ON BANKS.**

(1) The Authority shall incorporate a policy on banks subject to the *Banks and Financial Institutions Act 2000* for purposes of providing banking services within the Zone, subject to prior approval from the Minister responsible for finance matters.

(2) The Board shall appoint a competent Board of Management to manage the Policy on Banks in consultation with the Minister responsible.

(3) The operation of the banks beyond the special economic zone will be subjected to prior approval from the Minister.

### **19. REPRESENTATION OF THE AUTHORITY.**

(1) The Authority may appoint -

- (a) one or more members of the Board; or
- (b) the Chief Executive Officer; or
- (c) one or more officers, to appear on behalf of the Authority in any -
  - (i) judicial proceeding; or
  - (ii) in any act or contracts; or
  - (iii) instrument; or
  - (iv) signing of other documents.

(2) A document purporting to be an instrument made or issued by the Authority and signed by

- (a) the Chairman; or



## *Special Economic Zones Authority*

- (b) such other member of the Board; or
- (c) the Chief Executive Officer; or
- (d) officer of the Authority, as may, in accordance with Subsection (2), be vested by the Board with the legal and judicial representation of the Authority, shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Authority.

### **20. SPECIAL ECONOMIC ZONE REGISTER.**

The Authority shall maintain at its principal office and on its official web site a national register that includes all Special Economic Zone Licencees, Developers, Operators and Special Economic Zone Users.

## **PART IV. - BOARD AND CHIEF EXECUTIVE OFFICER.**

### **21. BOARD OF THE AUTHORITY.**

- (1) There is established a Board for the Authority.
- (2) The Board shall perform the functions, exercise the powers and manage and direct the affairs of the Authority.
- (3) The Minister may 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.

### **22. FUNCTIONS OF THE BOARD.**

- (1) The functions of the Board are -
  - (a) to recommend to the Minister, policies, plans, programs for development and expansion of special economic zones; and
  - (b) to designate duty-free shopping areas within zones; and
  - (c) to review and approve the annual budget, program and functions of the Special Economic Zone Authority as submitted by its Chief Executive Officer; and
  - (d) to carry out any functions assigned to the Board under this Act.

### **23. MEMBERSHIP OF THE BOARD.**

- (1) The Board shall consist of the -
  - (a) Chairman appointed under Section 25; and
  - (b) Departmental Head of the Department responsible for Commerce and Industry matters, or his nominee *ex officio*; and
  - (c) Departmental Head of the Department responsible for Treasury matters, or his nominee *ex officio*; and
  - (d) Departmental Head of the Department responsible for Planning matters, or his nominee, *ex officio*; and
  - (e) Departmental Head of the Papua New Guinea Customs Service, or his nominee, *ex officio*; and
  - (f) nominee of the Papua New Guinea Chamber of Commerce;
  - (g) a person with extensive experience in Public Service and or Private Sector nominated by the Minister; and
  - (h) a person with extensive knowledge and experience in accounting economics or management; and

## *Special Economic Zones Authority*

(i) a nominee of the Zone Users Association or an equivalent body.

(2) The Chief Executive Officer is not a member of the Board but shall sit in all the meetings of the Board and be the advisor to the Board, unless excused by the Board.

### **24. INELIGIBILITY TO BE A MEMBER OF THE BOARD.**

A person may not be appointed as a member of the Board, or to assume membership of the Board, if he -

- (a) has been elected, or is a candidate for election or appointment to the National Parliament, Provincial Government or Local-level Government; and
- (b) is or has been insolvent, or has applied to take the benefit of any law where he is a bankrupt or insolvent debtor, or has compounded with his creditors or made an assignment of his remuneration for their benefit; and
- (c) is seventy (70) years of age or over; and
- (d) is standing, or is to stand, trial for, or has been convicted during the ten years prior to his appointment of, any offence punishable by imprisonment; and
- (e) is prohibited from being a director, member or promoter of, or from taking part, in any way directly or indirectly, in the management of, a company, under any law; and
- (f) has his affairs administered under any law relating to mental health.

### **25. CHAIRMAN AND DEPUTY CHAIRMAN.**

(1) Subject to Subsection (2), the National Executive Council upon the recommendation of the Minister shall appoint the Chairman of the Board.

(2) The person to be appointed a Chairman must have sound experience in public or private sector administration and be of good character and standing.

(3) The members of the Board shall elect a Deputy Chairman of the Board from amongst the members appointed under Section 23(1)(g) to (i).

(4) The member appointed as Deputy Chairman shall hold office for two years and is eligible for reappointment.

(5) The Deputy Chairman shall act as Chairman if the Chairman is unable to perform the duties and functions of Chairman or is absent from a meeting of the Board.

### **26. TERMINATION OF MEMBERSHIP.**

(1) An *ex officio* member is deemed to have resigned from the Board upon ceasing to hold the *ex officio* post.

(2) A member, other than an *ex officio* member, may resign his membership of the Board by written notice delivered to the Authority.

(3) A member is deemed to have resigned if any of the circumstances in Section 24 occurs.

*Special Economic Zones Authority*

**27. 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.

**28. MEETINGS AND PROCEDURE 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 shall direct, but in any event not less frequently than once every three months.

(2) The Chairman must give not less than seven days' written notice of a proposed meeting, together with notice of the matters to be discussed at the meeting.

(3) The quorum for a meeting of the Board is five members, including the Chairman and decision would be taken pursuant to the majority votes of the present members.

(4) In the event of a tied vote, the Chairman has an additional casting vote.

(5) The Board may invite any person to attend and participate in a meeting, or part of a meeting, of the Board but such person shall not vote or participate in any decision making.

(6) All meetings of the Board must be recorded in accordance with the procedure determined by the Board.

**29. BOARD PROCEDURE.**

The Board shall adopt its own procedures for voting and quorums, voting rights, and powers, as well as the duties, functions, responsibilities, grounds for resignation and removal, and other rules and procedures governing Board members.

**30. DISCLOSURE OF INTERESTS BY MEMBERS 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 interests at a meeting of the Board.

(2) A disclosure under Subsection (1), shall be recorded in the minutes of the Board, and the member shall not take part, after the disclosure, in any deliberations or decision of the Board in relation to the matter.

**31. 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*.

## *Special Economic Zones Authority*

### **32. FEES AND EXPENSES.**

(1) As soon as practicable after the coming into operation of this Act, the Board shall recommend to the Minister an appropriate fee to be paid under the *Boards (Fees and Allowances) Act 1955* to each member of the Board, other than an ex officio member, having regard to the functions, duties and responsibilities of the members of the Board under this Act.

(2) Each member of the Board, other than an ex officio member, shall be paid a fee as the Minister determines after considering the recommendation of the Board under Subsection (1).

(3) The Authority shall pay to each member of the Board reasonable travelling and incidental expenses incurred while carrying out their duties under this Act.

### **33. REPORTS.**

(1) The Board shall furnish to the Minister -

- (a) on or before 15<sup>th</sup> 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) the Minister shall forward the report to the NEC for approval and subsequent presentation to Parliament.

### **34. CHIEF EXECUTIVE OFFICER.**

(1) There shall be a Chief Executive Officer of the Authority who shall have sound experience in the field of law, accounting, management, public or private sector administration, or engineering.

(2) The appointment of the Chief Executive Officer is subject to the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*.

(3) The Chief Executive Officer shall be appointed for a term of four (4) years by the National Executive Council, upon the recommendation from the Board, who prior to making such recommendation, have consulted the Minister.

(4) The Chief Executive Officer shall legally represent the Authority and be responsible for the day-to-day operation, administration, and management of the Authority.

(5) The Chief Executive Officer is the head of the staff of the Authority and responsible for the efficient carrying out of the functions of the Authority

## **PART V. - PROTECTION OF AUTHORITY'S INTEGRITY.**

### **35. CODE OF CONDUCT.**

(1) An Authorised Officer, shall not accept any kind of compensation for personal benefit from any Special Economic Zone Investor or a related person, including any, or arrange for any compensation for the benefit of a related person in connection with the performance by the Authority of its duties and functions, or exercise of its powers, under this Act.



## *Special Economic Zones Authority*

(2) For the purposes of this section "related person" means an owner, director, subsidiary, officer, executive, administrator, employee, agent, representative, associate or affiliate of a Special Economic Zone Investor.

### **36. CONFLICT OF INTEREST.**

(1) An Authorized Officer or related person shall not accept any gift or credit for himself, or on behalf of any Person with whom the Authorized Officer has a family, business, or financial relationship, if the acceptance would result, or would give the appearance of resulting, in a conflict of interest with respect to the duties and functions of the Authorized Officer.

(2) If an Authorized Officer, or related person, has a direct or indirect personal, financial, or business interest in any matter brought for deliberation before the Authority the Authorized Officer shall disclose in writing the apparent conflict of interest to the Board.

(3) An Authorized Officer who makes a disclosure under subsection (2) shall be disqualified from participating in any Board, management, or administrative deliberations and vote with regard to such matter.

(4) An Authorized Officer, other than an Authorized Officer who is a member of the Board appointed under Section 24 (1) (g), (h) or (i), or related person shall not be an owner, director, officer, executive, employee, administrator, agent, or representative of any Special Economic Zone Investor.

### **37. CONFIDENTIAL INFORMATION.**

(1) All confidential information acquired by the Authority, or an any Authorized Officer during the course of performing duties, functions, or responsibilities under this Act shall be confidential and shall not be disclosed, other than in accordance with this section.

(2) An Authorized Officer or related person shall not use confidential information or allow such information to be used for personal gain.

(3) Except as prescribed by this Act, no confidential information shall be disclosed by the Authority, or an Authorised Officer, without the express written consent of the person that provided such information, or except when disclosure of such information is -

- (a) required by a court of competent jurisdiction (including a tribunal); or
- (b) necessary for the fulfilment of any duty imposed by this Act, or any other law.

## **PART VI. - ONE-STOP-SHOP.**

### **38. ONE-STOP-SHOP.**

(1) Each Special Economic Zone site shall have a One-Stop-Shop.

(2) All Competent Agencies shall be represented at each One-Stop-Shop through competent staff members appointed by their respective agencies.

(3) One central, One-Stop-Shop in the National Capital District.

*Special Economic Zones Authority*

**39. COORDINATION WITH COMPETENT AGENCY.**

(1) A Competent Agency shall delegate to the Authority all or any of its statutory powers, duties and functions for the purposes of the administration of the one-stop-shop facility.

(2) A delegation under Subsection (1) shall be set out in a Memorandum of Understanding executed by the Authority and the Competent Agency.

(3) The functions, duties and powers that may be delegated under subsection (2) include, but are not limited to, the issuance of permits, certificates, authorizations, approvals, licences and registrations relating to labour, immigration, environment, health, safety, building code, business registration, urban-planning, tax and customs matters.

(4) Subject to Subsection (5), the Authority may delegate to a Developer or Operator any of its powers, duties, functions, and responsibilities under this Act, including the power to issue licenses, and to inspect the premises of Special Economic Zone Users.

(5) The Authority shall not delegate any of the powers, duties functions, and responsibilities of a Competent Agency unless with the express authorization of the respective Competent Agency.

**40. COOPERATION BY COMPETENT AGENCY.**

(1) A Competent Agency shall cooperate fully with the Authority in respect to all or any matters concerning the administration of a One Stop Shop facility in a Special Economic Zone including providing all or any records, documents, and information requested by the Authority.

(2) Where a Competent Agency refuses or fails to comply with a written request by the Authority, then the NEC, upon the Minister's recommendation, may direct a Competent Agency to cooperate with the Authority, and a directed agency shall cooperate and provide the Authority with any assistance including providing records, documents, and information as requested by the Authority.

**PART VII. - ESTABLISHMENT OF SPECIAL ECONOMIC ZONES.**

**41. ESTABLISHMENT OF SPECIAL ECONOMIC ZONES.**

(1) Except as otherwise provided in this Act, a Special Economic Zone shall be established pursuant to a Final Determination of the Authority made in accordance with this section.

(2) A Final Determination may be made -

(a) on the Authority's own initiative; or

(b) pursuant to a written application submitted by an Applicant in accordance with the procedures and requirements set out in Part VIII and the Regulations.

(3) A Final Determination shall not be made unless -

(a) the land upon which the proposed Special Economic Zone is to be established has been acquired, or authorized for use, by the Authority; and

(b) notice of the proposed establishment has been given under subsection (5); and

(c) comments received pursuant to a notice under subsection (5) have been considered; and

(d) the evaluation criteria having been satisfied; and

(e) the Minister has been consulted.

## *Special Economic Zones Authority*

(4) A Final Determination must not be made more than two months after the date specified in Subsection (5).

(5) Before making a Final Determination, the Authority shall publish a notice in the Gazette that requests any person likely to be affected by the proposed Special Economic Zone to submit written comments to the Authority within two months of the date of publication.

- (6) A notice under Subsection (5) shall include -
- (a) the sufficient information to fully identify the site (including geographical location, boundary, map coordinates, property registration designations); and
  - (b) the proposed economic activities of the proposed Special Economic Zone; and
  - (c) the date (being not more than two months from the date of publication of the notice) by which comments shall be submitted.
- (7) A Final Determination shall be published in the Gazette, and shall set out -
- (a) a detailed statement of the reasons and the basis for the Final Determination; and
  - (b) the geographical location, boundary, map coordinates, and property registrations of the Special Economic Zone; and
  - (c) all Authorized Economic Activities.

### **42. EVALUATION CRITERIA FOR THE ESTABLISHMENT OF SPECIAL ECONOMIC ZONES.**

The Authority in its evaluation of a Special Economic Zone proposal shall consider, but is not limited to any of the following factors -

- (a) the international trade effect of the planned Special Economic Zone, including the projected value of exports and re-exports, value-added processing potential, and investment and transfer-of-technology impact; and
- (b) the effect of the proposed Special Economic Zone on the establishment or retention of domestic manufacturing and downstream processing activities; and
- (c) the national job creation and technical training potential of the planned Special Economic Zone; and
- (d) the degree to which the Special Economic Zone will utilise existing national capacity to promote integration and linkages with the domestic economy; and
- (e) the extent to which the planned Special Economic Zone is in proximity to Enterprise clusters; and
- (f) the degree to which the business plan and feasibility study detailing the development, operation, and maintenance of the planned Special Economic Zone show a positive financial and economic rate of return that satisfies the minimum requirements specified in the Regulations; and
- (g) the extent to which the proposed business plan satisfies the requirements of an Special Economic Zone Investment Envelope; and
- (h) the fitness of the site and existing or planned Infrastructure in light of the business, development, and operation plans; and
- (i) the degree to which the proposed land area has access to actual or planned Off-Site Infrastructure; and
- (j) the extent of any population displacement or relocation resulting from Special Economic Zone construction and development; and
- (k) the physical expansion potential of the Special Economic Zone; and

## *Special Economic Zones Authority*

- (l) the physical security measures and construction means to be employed to separate the tourism, agribusiness, electricity-generation, petroleum, education, industrial, commerce, manufacturing, logistics, high technology, scientific-research, and residential development areas of the Special Economic Zone from one another, as well as from the Domestic Customs Territory, to prevent the evasion of the payment of any applicable Import Charges or taxes; and
- (m) the degree of compliance with a law or any law relating to the environment; and
- (n) the consultation with local communities and the provincial government; and
- (o) the consistency of the planned Special Economic Zone with national, provincial and local-level government development and poverty reduction goals; and
- (p) the extent to which land has been acquired for the Special Economic Zone and security of tenure including that the proposed Special Economic Zone has undisputed land titles that are not subject to any actual or impending legal liability, expropriation proceedings, disputes, or other contingencies that may give rise to a legal claim; and
- (q) the extent to which the proposed Special Economic Zone can be designed and constructed for multiple Special Economic Zone Users; and
- (r) the extent to which the proposed land area complies with any law in respect of land, planning, construction, and public works; and
- (s) the degree to which Competent Agency supports the establishment of the proposed Special Economic Zone; and
- (t) any other factor that the Authority deems appropriate to protect the public interest, health, safety, and welfare of the State.

### **PART VIII. - ISSUE OF SPECIAL ECONOMIC ZONE LICENCES AND DEVELOPMENT AND OPERATION OF SPECIAL ECONOMIC ZONES.**

#### **43. ISSUANCE OF SPECIAL ECONOMIC ZONE LICENCE.**

- (1) An Applicant who proposes to develop, operate, maintain, and promote a Special Economic Zone may submit an application to the Authority for consideration and granting of a Special Economic Zone Licence in accordance with this Act.
- (2) An application shall only be granted after due compliance with the conditions and criteria set out in this Part.
- (3) Subject to Subsection (4), the Authority shall select a Developer or an Operator (or a Developer and Operator as the case may be) of a Special Economic Zone pursuant to an international selection process.
- (4) Subsection (3) does not apply to a person who -
  - (a) owns the land proposed for the Special Economic Zone site; or
  - (b) has submitted a written request to the Authority for the establishment of a Special Economic Zone under Section 41.
- (5) For the purposes of this Section, a person to whom Subsection (4) applies is not exempted from the application requirement, the Special Economic Zone Licence or, if required, the execution of a Development and Operator Agreement.



## *Special Economic Zones Authority*

(6) After the conclusion of the international selection process and within two months after the submission of the application, the Authority shall make a Final Determination that either grants a Special Economic Zone Licence to the Applicant or refuses the application.

(7) The Final Determination that sets out the Special Economic Zone Licence shall be published in the Gazette and shall include -

- (a) a detailed statement of the reasons, together with the legal basis, for the Final Determination; and
- (b) the specific terms and conditions governing the establishment, development, operation, and maintenance of the Special Economic Zone; and
- (c) a statement whether the Special Economic Zone Licensee shall act as a Developer or Operator, or both; and
- (d) a statement whether the Special Economic Zone Licensee is delegating any of its development, operation, and maintenance rights and obligations to a subcontractor and the name and details of the subcontractor; and
- (e) the name of the Special Economic Zone Licensee; and
- (f) the licence duration; and
- (g) licence renewal conditions; and
- (h) geographical location (including boundary, map co-ordinates, and property registrations of the Special Economic Zone); and
- (i) the Authorized Economic Activities.

(8) Upon the issue of a Special Economic Zone Licence, the Authority and the Developer or Operator (or Developer and Operator as the case may be) shall execute a Development Agreement, Operator Agreement or Development and Operator Agreement as the case may be.

#### **44. SPECIAL ECONOMIC ZONE LICENCE APPLICATION REQUIREMENTS AND ELIGIBLE APPLICANTS.**

- (1) An Applicant may consist of a sole Enterprise or a consortium of two or more Enterprises.
- (2) If an Applicant is a consortium -
  - (a) the lead Enterprise organising the consortium shall be specified in the application; and
  - (b) if a Special Economic Zone Licence is issued the Authority shall issue it to the lead Enterprise.
- (3) An Applicant shall include the following information, together with supporting documentation, in its application -
  - (a) a valid business registration certificate; and
  - (b) verified financial resources and funding plans and audited financial statements for the last five (5) years preceding the application date; and
  - (c) technical capacity and previous experience of the Applicant with Special Economic Zones or other large scale projects; and
  - (d) a business plan and preliminary feasibility study detailing the development, operation, and maintenance of the planned Special Economic Zone, including the design, construction, and provision of Infrastructure and other Assets; and
  - (e) a concept master development plan for the proposed Special Economic Zone, including land use, zoning, and any urban plans; and

## *Special Economic Zones Authority*

- (f) the quality and size of the Infrastructure facilities that the Applicant intends to have constructed, including all On-Site and any Off-Site Infrastructure, together with cost estimates; and
- (g) the proposed timeframe to commence and complete the design and construction of the planned Special Economic Zone and Infrastructure, including phased development schedules and minimum development obligations during such phases; and
- (h) a statement of compatibility of the proposed Special Economic Zone with the approved master development plan of the local community; and
- (i) a schedule of fees to be charged for any goods, services, or Infrastructure provided directly or indirectly by the applicant in the proposed Special Economic Zone; and
- (j) a statement that the subject land area and Special Economic Zone planning and construction comply with all applicable land, planning, construction, and public works laws that are not otherwise inconsistent with this Act and the Regulations; and
- (k) physical security measures and construction means to be employed to separate the tourism, agribusiness, electricity-generation, petrochemical, education, industrial, commerce, manufacturing, logistics, high technology, scientific-research, and residential development areas of the Special Economic Zone from one another, as well as from the Domestic Customs Territory; and
- (l) payment of a non-refundable application fee; and
- (m) any other relevant information.

### **45. ASSIGNMENT OF RIGHTS.**

- (1) Subject to Subsection (3), a Special Economic Zone Licensee is authorized to -
- (a) act as the exclusive Developer or the exclusive Operator of the Special Economic Zone, or both, for the duration of the Special Economic Zone Licence; or
  - (b) assign any of its rights and obligations under this Act to a person including sub-contractors consistent with the Special Economic Zone Licence.
- (2) Notwithstanding Subsection (1)(b), the Special Economic Zone Licensee shall retain all obligations and responsibilities for the development, operation, and maintenance of the designated Special Economic Zone.
- (3) A Special Economic Zone Licensee shall not sell, convey, assign, or transfer in whole or in part a Special Economic Zone Licence to any person without the written approval from the Authority.
- (4) If a Special Economic Zone Licensee fails to comply with this Section -
- (a) its Special Economic Zone Licence shall be automatically revoked under Section 41; and
  - (b) it shall be liable to the imposition of monetary penalties in accordance with this Act.

### **46. DEVELOPER RIGHTS.**

- (1) A Developer may conduct all or any authorised economic activities in a Special Economic Zone, including -
- (a) to deal with any part of the Special Economic Zone Lands or other Assets within its control as allowed under this Act and any other law, including dealing in subleases, and to receive payment or collect rental fees for such transactions; and

## *Special Economic Zones Authority*

- (b) to develop, exploit, and service Special Economic Zone Lands and other Assets, in accordance with the Special Economic Zone Licence and Development Agreement; and
- (c) to provide utilities and other services in the Special Economic Zone, in accordance with the applicable Development Agreement, this Act and any other law, and to charge fees for such services; and
- (d) to provide utilities and other services in Papua New Guinea in accordance with this Act and any other law; and
- (e) to employ both citizens and foreign nationals, without any discrimination; and
- (f) to enter into contracts with any person authorised under this Act for the development, exploitation, and servicing of the Special Economic Zone, Special Economic Zone Lands, and other Assets, including On-Site and any Off-Site Infrastructure; and
- (g) to enter and freely participate in international financial markets, without any legal impediments or restrictions, to obtain funds, credits, guarantees, and other financial resources; and
- (h) to exercise any other rights under this Act and the Development Agreement.

(2) A subcontractor engaged by a Developer shall employ both citizens and foreign nationals under the same conditions as the Developer.

### **47. DEVELOPER OBLIGATIONS.**

A Developer or a subcontractor referred to in Section 46 shall -

- (a) comply with this Act, and any other law relating to the administration of the Special Economic Zone including the respective Special Economic Zone Licence and the Development Agreement; and
- (b) prepare, either individually or in cooperation with other developers, the detailed feasibility study and master development plan for the designated Special Economic Zone, including the land use and zoning plans, to be approved by the Authority for all Special Economic Zones established after the commencement date in coordination with the Competent Agencies; and
- (c) construct Assets on Special Economic Zone Lands, including On-Site Infrastructure, transportation connections, employee quarters, and office space and other facilities for use by the respective Competent Agencies, in accordance with the Memorandum of Understanding and the Development Agreement; and
- (d) subject to this Act or any other law and in consultation with the Authority set fees for any utilities or other services provided in the Special Economic Zone by the Developer;
- (e) submit to the Authority an annual report that provides the following information with regard to the Special Economic Zone -
  - (i) Special Economic Zone Investments undertaken during the preceding calendar year and the investments projected for the forthcoming calendar year; and
  - (ii) area of Special Economic Zone Lands under development and the Assets constructed thereon; and
  - (iii) other information deemed relevant by the Authority relating to the development of the Special Economic Zone; and
- (f) develop the Special Economic Zone on a commercial basis in accordance with the Special Economic Zone Licence and the governing Development Agreement;

## *Special Economic Zones Authority*

- (g) maintain all company books, records, accounts, and financial statements in accordance with international financial reporting standards, including the use of full accrual accounting on a daily basis, as subject to internal and external audits as required by this Act or any other law; and
- (h) any directive issued by the Authority from time to time consistent with this Act.

### **48. OPERATOR RIGHTS.**

(1) An Operator may conduct all or any authorised economic activities in a Special Economic Zone, including -

- (a) to manage and deal with any part of the Special Economic Zone Lands or other Assets within its control as allowed under this Act and any other law, including dealing in subleases, and to receive payment or collect rental fees for such transactions; and
- (b) operate or manage the Special Economic Zone in accordance with the applicable Special Economic Zone License, the Operator Agreement, this Act and any other law; and
- (c) Provide utilities and other services in the Special Economic Zone in accordance with the applicable Operator Agreement, this Act and any other law, and to charge fees for such services; and
- (d) employ both citizen and foreign nationals without any discrimination; and
- (e) enter into contracts with a person authorised under this Act for the operation, maintenance and promotion of the Special Economic Zone and all Assets; and
- (f) adopt the operational rules and procedures to govern the day-to-day activities of the Special Economic Zone; and
- (g) enter and freely participate in international financial markets, without any legal impediments or restrictions, to obtain funds, credits, guarantees, and other financial resources; and
- (h) exercise any other rights under this Act and the applicable Operator Agreement.

(2) A subcontractor referred to in Subsection (1)(e) shall employ both citizen and foreign nationals under the same conditions as the Operator.

### **49. OPERATOR OBLIGATIONS.**

An Operator or a subcontractor referred to in Section 47 and 48 shall -

- (a) comply with the respective Special Economic Zone License and Operator Agreement under this Act, and any other law relating to the administration of the Special Economic Zone; and
- (b) monitor and supervise the activities of all Special Economic Zone Users in compliance with this Act and any other law; and
- (c) provide equal treatment to, and avoid discriminating against, any Special Economic Zone Users; and
- (d) subject to this Act and any other law and in consultation with the Authority set fees for any utilities and any other services provided in the Special Economic Zone by the Operator; and
- (e) promote the Special Economic Zone both domestically and internationally; and
- (f) provide office space and other facilities for use by the respective Competent Agency including Papua New Guinea Customs Service in the customs controlled area of the Special Economic Zone; and



## *Special Economic Zones Authority*

- (g) submit to the Authority an annual report that provides the following information with regard to the Licensed Special Economic Zone -
  - (i) Special Economic Zone Investments undertaken during the preceding calendar year and the investments projected for the forthcoming calendar year; and
  - (ii) number, size, employment, investment, and business activities of all Special Economic Zone Enterprises; and
  - (iii) area of Special Economic Zone Lands developed and the Assets constructed thereon; and
  - (iv) other information considered relevant by the Authority that relates to the operation and maintenance of the Special Economic Zone; and
- (h) operate, maintain and promote the Special Economic Zone on a commercial basis in accordance with this Act and any other law, including the Special Economic Zone Licence and the governing Operator Agreement; and
- (i) keep all company books, records, accounts, and financial statements in accordance with international financial reporting standards, including the use of full accrual accounting on a daily basis, as subject to internal and external audits as required by this Act and any other law; and
- (j) any directive issued by the Authority from time to time consistent with this Act.

### **50. ADDITIONAL PERFORMANCE REQUIREMENTS FOR DEVELOPERS AND OPERATORS.**

(1) In addition to the obligations set out in Sections 46, 47, 48, 49, the Development and Operator Agreement, Developer Agreement or Operator Agreement as the case may be, shall include performance requirements that an Enterprise must satisfy to maintain its status as a Developer or Operator.

- (2) The requirements under Subsection (1) shall include but not limited to the following -
  - (a) compliance with the financial obligations and guarantees required by the Authority, including the amount of capital and debt financing and the relevant time periods to provide such financing, to develop and operate the Special Economic Zone; and
  - (b) the requirement to provide a minimum level of vocational and technical training to citizens; and
  - (c) the requirement to comply with all employment and environment obligations specified in this Act and any other law; and
  - (d) performance requirements concerning the completion of the phased development and operation schedule of the Special Economic Zone as specified in the Special Economic Zone Licence.

### **51. REVOCATION OF SPECIAL ECONOMIC ZONE LICENCE.**

(1) Subject to Subsection (2), if a Special Economic Zone Licensee contravenes this Act, the Regulations, its Special Economic Zone Licence, the Authority may revoke, in whole or in part, the Special Economic Zone Licence by issuing a Final Determination.

- (2) A Final Determination shall not be issued unless the Authority -
  - (a) gives written notice of the contravention and the intention to revoke the Special Economic Zone Licence; and
  - (b) provides an opportunity for the Special Economic Zone Licensee to make written and oral representations to the Authority not less than 2 months after the giving of the written notice.

*Special Economic Zones Authority*

- (3) A Final Determination is not valid unless it is published in the Gazette.
- (4) Notwithstanding Subsection (1), if -
  - (a) a Special Economic Zone Licensee seeks bankruptcy or insolvency protection under the laws of the Papua New Guinea or any foreign jurisdiction; or
  - (b) a petition for bankruptcy, the appointment of a trustee, receiver, or other custodian, or any other similar action is filed against the Special Economic Zone Licensee, whether voluntary or involuntary, and is not dismissed within one month of such filing; or
  - (c) Authority becomes aware that an applicant provided false information, declarations, or representation in its application upon which the Authority relied when granting the Special Economic Zone Licence; or
  - (d) a Special Economic Zone Licensee has engaged in any unlawful or prohibited activity.
- (5) The Authority may revoke in whole or in part the Special Economic Zone Licence by virtue of a Final Determination published in the Gazette.
- (6) A Final Determination shall become final and conclusive -
  - (a) if it is not contested two months after its date of publication in the Gazette in the event that the Final Determination is not contested pursuant to the dispute resolution provisions of this Act; or
  - (b) if it is contested and the outcome of the dispute resolution procedure is that the Special Economic Zone Licence shall be revoked the day that the dispute resolution procedure is concluded.
- (7) On the first business day after which the Special Economic Zone Licence withdrawal becomes final and conclusive, the Authority shall publish a notice in the Gazette requesting eligible Applicants to substitute in whole or in part for the revoked Special Economic Zone Licensee for the duration of the withdrawn Special Economic Zone Licence.
- (8) The Authority shall determine, in its own discretion but in accordance with criteria in this Act, the most competent applicant as the substitute Special Economic Zone Licensee and shall publish such determination in the Gazette.
- (9) If no eligible Applicant applies to substitute for the revoked Special Economic Zone Licensee within 6 months after the publication of the notice under Subsection (5), the Authority shall coordinate with any Developers, Operators, and Special Economic Zone Users of the affected Special Economic Zone to arrive at a practical arrangement to continue the operation of the Special Economic Zone.
- (10) An arrangement under Subsection (8) shall attempt to continue and maintain, as far as reasonably practicable -
  - (a) all Special Economic Zone activities consistent with the terms and conditions of the withdrawn Special Economic Zone Licence; and
  - (b) all Development and Operator Agreements; and
  - (c) all Special Economic Zone User Licences until the expiration date of the withdrawn Special Economic Zone Licence.

## *Special Economic Zones Authority*

(11) If an arrangement cannot be made under Subsection (8), or after commencement the Authority considers that the arrangement does not comply with Subsection (10), the Authority shall prohibit and cease all operations in the Special Economic Zone.

(12) Between the date that a Final Determination becomes final and conclusive and the date from which a substitute Licensee commences operations pursuant to a determination under Subsection (5), the Authority shall exercise all of the legal rights and fulfil all of the legal obligations corresponding to the revoked Special Economic Zone Licensee pursuant to the withdrawn Special Economic Zone License.

### **PART IX. - SPECIAL ECONOMIC ZONE LANDS.**

#### **52. ACQUISITION OF LAND BY THE AUTHORITY.**

(1) The Authority shall acquire Special Economic Zone lands either by agreement with the owner or by means of compulsory acquisition under Part III Division 5 of the *Land Act 1996* or lease arrangements.

(2) Prior to acquisition of Special Economic Zone lands, the Authority shall coordinate with the relevant Competent Agency and be satisfied as to the following matters -

- (a) that the owner or in respect to customary land the owners have been informed of the acquisition and agree to the nature of the acquisition; and
- (b) that a compensation package has been agreed with the owner; and
- (c) that the owner has executed an agreement with the Authority agreeing not to interfere, disturb, dispute, claim, file proceedings in a court or tribunal in respect to ownership of such land and to all times maintain peace and good order.

#### **53. APPROVAL BY THE AUTHORITY OF OTHER LANDS.**

(1) The Authority may approve land other than land acquired by the Authority under Section 52 as a Special Economic Zone land.

(2) Prior to giving its approval, the Authority shall be satisfied that the land is freed and discharged from all interests, trusts, restrictions, reservations, obligations, contracts, licenses, charges, liens, caveats, or otherwise all encumbrances either present or future except where they may be allowed under this Act or by express approval by the Authority.

#### **54. NO TRANSFER OF SPECIAL ECONOMIC ZONE LAND.**

A Developer or an Operator shall not transfer any Special Economic Zone Lands or any other assets to any third party, including through a subleasing arrangement, unless the proposed transferee agrees to undertake the same obligations of the Developer or a Developer and Operator under the initial Developer Agreement or Development and Operator Agreement as the case may be.

### **PART X. - SPECIAL ECONOMIC ZONE USERS.**

#### **55. USER LICENCE.**

(1) No person shall conduct an economic activity in a Special Economic Zone without a valid Special Economic Zone User License issued by the Authority or an Operator that is authorized under this Act.

## *Special Economic Zones Authority*

(2) For the purposes of Subsection (1), any person may submit an application for a Special Economic Zone User License to the Authority or the Operator as the case may be, for the issuance of such license.

(3) A License issued under this Part is conditional upon the holder of the Special Economic Zone User License commencing a lawful economic activity (including the acquisition or leasing of land in the Special Economic Zone) within two months of the issue of the Special Economic Zone User License.

### **56. SPECIAL ECONOMIC ZONE USER RIGHTS.**

A Special Economic Zone User may, during the validity of its Special Economic Zone User License conduct all or any authorized economic activity, including the following -

- (a) subject to this Act including the applicable Special Economic Zone User License or any other law, may acquire and transfer all or any Asset; and
- (b) admit into any Special Economic Zone, export outside the national territory, and sell in the Domestic Customs Territory all classes or kinds of goods and services in accordance with this Act; and
- (c) subject to this Act or any other law, determine the prices of any of its goods or services sold inside or outside the Special Economic Zone; and
- (d) employ citizen and foreign nationals without any discrimination; and
- (e) sell at any time any of its Assets, including the Enterprise as a whole; and
- (f) exercise any other legal rights set out in the Special Economic Zone User License; and
- (g) manage its Enterprise in any manner consistent with this Act.

### **57. SPECIAL ECONOMIC ZONE USER OBLIGATIONS.**

(1) A Special Economic Zone User shall comply with all obligations, restrictions, and prohibitions arising under this Act or any other law, the Special Economic Zone User License, and the applicable Special Economic Zone operating rules and procedures.

- (2) A Special Economic Zone User shall -
- (a) cooperate with the Authority and all Competent Agencies by submitting all documents, books, or accounts requested by such agencies; and
  - (b) answer any question asked by the Authority or a Competent Agency on any matter arising under this Act or the Regulations; and
  - (c) permit the Authority, an Authorized Officer or a Competent Agency access to its premises of to conduct inspection as authorized under this Act or any other law; and
  - (d) comply with any directive issued by the Authority consistent with this Act.

### **58. REVOCATION, SUSPENSION OR CANCELLATION OF SPECIAL ECONOMIC ZONE USER LICENCES.**

- (1) The Authority may revoke, suspend, or cancel a Special Economic Zone User License if -
- (a) the Special Economic Zone User contravenes a provision of this Act, the operating rules and procedures, the Special Economic Zone User License, or any other Law; and
  - (b) the Special Economic Zone User seeks bankruptcy or insolvency protection under the laws of Papua New Guinea or any foreign jurisdiction; and



## *Special Economic Zones Authority*

- (c) a petition for bankruptcy, the appointment of a trustee, receiver, or other custodian, or any other similar action is filed against the Special Economic Zone User, whether voluntary or involuntary, and is not dismissed within one month of such filing; and
- (d) the Special Economic Zone User provided false information, declarations, or representation in its application upon which the Authority relied when granting the Special Economic Zone User License; and
- (e) the Special Economic Zone User has committed an illegal act or engaged in a prohibited activity; and
- (f) has failed to comply with a lawful directive issued by the Authority consistent with this Act.

(2) A Special Economic Zone User shall not have any rights or privileges under this Act upon the revocation, suspension, or cancellation of a Special Economic Zone User License.

### **59. VOLUNTARY SUSPENSION OF SPECIAL ECONOMIC ZONE USERS ACTIVITIES.**

(1) If a Special Economic Zone User intends to suspend, discontinue, or cease any of its Authorized Economic Activities, the Special Economic Zone User shall provide the Authority with two month's prior written notice before undertaking such action.

(2) If a Special Economic Zone User fails to give the notice required under Subsection (1), it shall pay an administrative penalty as prescribed in the Regulations.

(3) Subject to Subsections (4) and (6), if a Special Economic Zone User ceases operations for a period of sixty continuous days, its Special Economic Zone User License is deemed to be revoked.

(4) A Special Economic Zone User may apply in writing, before the end of the period in subsection (3), to the Authority for permission to cease its operations for a longer period.

(5) The Authority shall determine an application under Subsection (4) and shall notify the Special Economic Zone User in writing of its determination.

(6) All rights conferred on a Special Economic Zone User by reason of its Special Economic Zone User License cease on and from the date of its revocation under this section.

## **PART XI. - TAXATION OF SEZA ENTERPRISES.**

### **60. TAXATION OF SPECIAL ECONOMIC ZONE ENTERPRISES.**

(1) All or any tax and incentive regimes provided under any Law shall apply in the Special Economic Zones.

(2) Notwithstanding any other law, no taxes or imposts, local or national including but not limited to -

- (a) income tax (including dividend withholding tax); and
- (b) custom duties (including export and import), tariffs, levies (including import levies) and other similar imposts; and
- (c) excise duty or other similar imposts; and
- (d) stamp duty and other similar imposts on loans, borrowings, securities and other forms of financing.

*Special Economic Zones Authority*

- (3) Shall be imposed on -
- (a) any investor or business establishment or enterprise operating within an economic zone; or
  - (b) a buyer of zone goods and products; or
  - (c) any zone goods and products,

and in no circumstances shall a business establishment or enterprise operating in an economic zone shall be liable for payment of such taxes or other imposts.

**PART XII. - APPLICATION OF CUSTOMS LAWS.**

**61. DUTY FREE EXPORT AND IMPORT.**

Subject to this Act and the customs laws, a Special Economic Zone Enterprise shall not be liable to pay import or export tax on goods entering and exiting a Special Economic Zone.

**62. CUSTOMS CONTROLLED AREAS.**

(1) Any part of any Special Economic Zone, including the entire Special Economic Zone, shall be a duty free customs controlled area that is subject to the customs rules, procedures, and formalities, including the treatment of any abandoned or seized merchandise.

(2) Subject to this Act and any other law, a Special Economic Zone Enterprise in a customs duty free area may admit into any customs controlled area of any Special Economic Zone and export outside the national territory all classes or kinds of semi-finished, intermediate, and finished goods, merchandise, products, raw materials, construction materials, components, inputs, parts, supplies, tools, machinery, equipment, vehicles, and other goods and services of foreign or Papua New Guinea origin (that are not otherwise restricted or prohibited by the Regulations), without the payment of any Import Charges, other customs duties, or the imposition of any trade related restrictions, including quantitative restrictions.

(3) Subsection (2) shall apply regardless of whether such admission is for storage, exhibition, assembly, manufacture, further processing, or re-exporting operations.

**63. CUSTOMS REQUIREMENTS GOVERNING GOODS ENTERING AND EXITING THE SPECIAL ECONOMIC ZONE**

(1) All or any -

- (a) movement or transit of goods entering into, and exiting from, any customs controlled area of a Special Economic Zone; and
- (b) transfer of goods between Special Economic Zone Enterprises situated in a customs controlled area; and
- (c) loss or destruction of merchandise sustained by a Special Economic Zone Enterprise; shall be subject to the completion of a customs form or declaration

(2) All or any Special Economic Zone Enterprise shall be subject to the customs monitoring, compliance, inspection, and audit procedures.

(3) The Authority or the Papua New Guinea Customs Service may require any Special Economic Zone Enterprise to furnish additional information, including documents, books, or accounts, regarding its entries, admissions, importations, shipments, exportations, and other related transactions and movements of goods as necessary to exercise regulatory control over such activities.

## *Special Economic Zones Authority*

- (4) A Special Economic Zone Enterprise shall maintain an automated inventory control system and registry that records the entry, admission, storage, further processing, substantial transformation, transit, exit, shipment, exportation, and customs duty free and tax status of all goods acquired, transferred, or sold by such enterprise.
- (5) A Special Economic Zone Enterprise shall undertake on an annual basis a physical inventory and audit, as well as an inventory reconciliation of all Special Economic Zone goods and financial accounts.
- (6) Goods that move from one customs-duty-free customs controlled area of a Special Economic Zone to -
- (a) another customs-duty-free custom controlled area of the same or of a different Special Economic Zone; or
  - (b) a bonded warehouse under Special Economic Zone customs-duty-free control; and
  - (c) shall be exempt from the payment of any import charges.
- (7) Notwithstanding Subsection (6), any Special Economic Zone goods the sale, destruction, or loss of which is not documented by a valid customs form or declaration evidencing its exportation outside the national territory, its shipment to the Domestic Customs Territory, or its destruction or loss, shall be subject to the customs laws.
- (8) If a Special Economic Zone Enterprise sells its goods in the Domestic Customs Territory, those goods, together with any undocumented merchandise referred to in Subsection (7), shall be subject to the Customs Laws.
- (9) Subject to Subsection (10), import charges payable under Subsection (8) shall be based on the original value of any foreign materials, including raw materials, constituent parts, or inputs, incorporated into such product in its condition as initially admitted into the Special Economic Zone.
- (10) No import charges are payable if any previously paid customs charges in respect of the sold goods have not been refunded.
- (11) For purposes of calculating the import charges under this section, goods originating from any duty free customs controlled area of a Special Economic Zone and entered into the Domestic Customs Territory shall be deemed imported into the territory on the date of exit from the Special Economic Zone.
- (12) Goods of foreign origin shipped from any customs controlled area of a Special Economic Zone to the Domestic Customs Territory shall receive most-favored-nation treatment upon their entry into the Domestic Customs Territory.
- (13) All merchandise substantially transformed into a finished export product in any Special Economic Zone from admitted raw materials, components, parts, inputs, semi-finished merchandise, or other materials of foreign origin shall be deemed as originating in Papua New Guinea.
- (14) The Regulations shall prescribe the issue of certificates of origin, including the criteria for origin of goods.

## *Special Economic Zones Authority*

(15) Any goods of Papua New Guinea origin shipped from the Domestic Customs Territory to any customs duty free customs controlled area of a Special Economic Zone shall be deemed to be export shipments.

(16) This section applies to services and all references to "goods" are deemed to include a reference to services.

### **PART XIII. - ENVIRONMENT, EMPLOYMENT AND IMMIGRATION.**

#### **64. SPECIAL ECONOMIC ZONE ENVIRONMENTAL RESPONSIBILITY.**

(1) The Authority shall be responsible, in coordination with the relevant Competent Agency responsible for environment matters for the protection and maintenance of the environment, water supply, natural resources and biological diversity, in each Special Economic Zone.

(2) The Authority may by Regulations prescribe hazardous wastes, materials, substances, chemicals and manufacturing and processing operations that are prohibited in Special Economic Zones.

(3) The Authority and the relevant Competent Agency responsible for the environment matters shall agree and execute a Memorandum of Understanding to establish, consistent with this Act and any other law with regard to -

- (a) environmental impact assessments; and
- (b) environmental permits, approvals, and certificates; and
- (c) air and water quality, emission, and effluent limits; and
- (d) enforcement and monitoring, including inspection and auditing procedures; and
- (e) contingency and emergency planning; and
- (f) penalties, fines, sanctions, and remedial actions.

#### **65. SPECIAL ECONOMIC ZONE EMPLOYMENT RESPONSIBILITY.**

(1) The Authority shall be responsible, in coordination with the relevant Competent Agency responsible for employment matters, for arrangements in Special Economic Zones that -

- (a) protect rights of employees in Special Economic Zones; and
- (b) ensure safe and reasonable working conditions in Special Economic Zones; and
- (c) provide for vocational and technical training for citizens in each Special Economic Zone, in accordance with this Act and any other law.

(2) The arrangements under Subsection (1) shall provide treatment in Special Economic Zones no less favorable than the treatment applying outside Special Economic Zones.

(3) The following employment practices shall be strictly prohibited in a Special Economic Zone -

- (a) working hours exceeding the maximum limits prescribed in this Act or any other law; and
- (b) wage rates and benefits falling below the minimum levels outside the Special Economic Zones; and
- (c) labor quotas imposed on foreign nationals that exceed the maximum limits; and
- (d) sponsorship-guarantee requirements imposed on foreign nationals; and
- (e) restrictions on collective-bargaining agreements.

## *Special Economic Zones Authority*

(4) The Authority and the relevant Competent Agency responsible for employment matters shall agree and execute a Memorandum of Understanding to establish, consistent with this Act and any other regarding -

- (a) employment permits, approvals, and certificates; and
- (b) work, hygiene, and safety conditions; and
- (c) enforcement and monitoring, including inspection and auditing procedures; and
- (d) penalties, fines, and sanctions.

### **66. SPECIAL ECONOMIC ZONE IMMIGRATION RESPONSIBILITY.**

(1) The Authority shall be responsible, in coordination with the Competent Agency responsible for the migration matters, for facilitating the establishment of a special immigration regime in the Special Economic Zones to expedite the issue of entry permits for Foreign Nationals to be employed by Special Economic Zone Enterprises.

(2) The immigration regime under Subsection (1) shall -

- (a) be prescribed in the Regulations; and
- (b) not be inconsistent with the minimum requirements set out in the Migration Laws for entry of foreign nationals into Papua New Guinea.

(3) The applicable Memorandum of Understanding executed by the Authority and the Departmental Head responsible for the migration matters shall establish, consistent with this Act and any other law concerning -

- (a) Special Economic Zone security screening; and
- (b) entry and work-visa forms, requirements, restrictions, and time limits; and
- (c) temporary and permanent residency certificates; and
- (d) enforcement and monitoring, including inspection and auditing procedures; and
- (e) penalties, fines, and sanctions.

## **PART XIV – INVESTOR RIGHTS AND GUARANTEES.**

### **67. SPECIAL ECONOMIC ZONE INVESTOR RIGHTS AND GUARANTEES.**

The guarantees, concessions and incentives, under the *Investment Promotion Act 1992*, *Income Tax Act 1959* or any other law that apply to a foreign investor also apply under this Act.

### **68. FURTHER INCENTIVES.**

(1) The Authority after coordination with relevant Competent Agency and, if applicable, the National Executive Council, shall provide from time to time further incentives to citizen and foreign investors in the Special Economic Zone.

(2) For the purposes of Subsection (1), the Authority may provide such incentives either at its own initiative or upon receiving an application from a Special Economic Zone Licensee.

### **69. RECORD OF INCENTIVES.**

(1) The Authority shall maintain proper records of all and any incentives provided by the Authority in respect to the Special Economic Zones.

(2) The listing of all or any incentives provided by the Authority in a Special Economic Zone shall be published in a reputable local and foreign newspaper once a month.



**PART XV. - SETTLEMENT OF DISPUTES.**

**70. ADMINISTRATIVE DISPUTE, ETC.**

(1) This Part applies to administrative, civil or commercial disputes between the Authority, and a Special Economic Zone Investor.

(2) This Part does not apply to any criminal offence under the Criminal Code Act, or any other law whereby citizen or foreign nationals shall be subject to the same laws as applicable outside of the Special Economic Zone.

**71. DISPUTE BY SPECIAL ECONOMIC ZONE INVESTOR.**

(1) A Special Economic Zone Investor may dispute any Final Determination in accordance with the procedures prescribed in the Regulations.

(2) A dispute shall be filed within one month after the date -  
(a) of publication in the Gazette of the disputed Final Determination; or  
(b) when the dispute has occurred under this Act.

(3) Upon the filing of any administrative challenge, the Authority shall certify an authentic copy of the administrative records in accordance with the procedures.

(4) The Claimant in the administrative challenge proceeding shall be entitled to a hearing before the Authority.

**72. SETTLEMENT OF DISPUTES.**

(1) If a Dispute arises, the parties shall make every effort to reach an amicable settlement within six (6) months.

(2) If a settlement is not reached within 6 months, the dispute should be resolved according to the Claimant's choice, or otherwise as agreed between the Parties in writing -

- (a) by Papua New Guinea commercial courts; and
- (b) through arbitration according the rules of their choice, unless otherwise agreed to in writing between the parties; and
- (c) the rules of arbitration of any approved local or regional center of arbitration; and
- (d) the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the "ICSID Convention"), if the ICSID Convention is available; and
- (e) the Rules of Arbitration of the International Chamber of Commerce ("ICC"); and
- (f) the framework of any bilateral or multilateral agreement on investment protection to which the Government and the country of which the investor is a national are parties.

**PART XVI. - ENFORCEMENT.**

**73. OFFENCES.**

(1) A Special Economic Zone Licensee, and any person acting in the capacity of an employee, servant or agent of a Special Economic Zone Licensee, who engages in economic activities except under and in accordance with a License, held by the Special Economic Zone Licensee, is guilty of an offence.

## *Special Economic Zones Authority*

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

Default penalty: fine not exceeding K10, 000.00.

- (2) A person who -
- (a) without lawful authority, erects, set up, participate, established, operate, or promote in, on or from a Special Economic Zone or without due authority -
    - (i) makes or causes to be made; or
    - (ii) uses or causes to be used; or
    - (iii) has in his possession, a brand or stamp usually used by Authorized Officers; or
  - (b) unlawfully alters, obliterates, defaces, pulls up, removes or destroys a boundary mark or any stamp, mark, sign, license, permit, certificate, license or order, used or issued by the Minister, or any other Authorized Officer; or
  - (c) unlawfully -
    - (i) cuts, breaks, throws down or otherwise destroys or damages any building, fence or gate in or enclosing a Special Economic Zone; or
    - (ii) cuts through, breaks down or otherwise destroys a building, fence, wall or structure of any kind which form a part of the boundary of a Special Economic Zone; or
  - (d) for the purpose of obtaining -
    - (i) a favorable report, recommendation, certificate, valuation or assessment, whether in respect of any place, employment, sale, auction, permit, authority, license, lease or any other benefit; or
    - (ii) any abstention on the part of an Authorized Officer from any act which forms part of his duties, exercises compulsion on an Authorized Officer by violence or threats, or corrupts or attempts to corrupt him by promises, offers, gifts or presents; or
  - (e) refuses or fails to comply with a lawful direction of an Authorized Officer; or
  - (f) knowingly furnishes an Authorized Officer with a false or incorrect statement of any goods, and services including products for export or import or by an agent or employee of the person and on which fees, charges, duties and charges are payable to the State or to the Authority; or
  - (g) knowingly makes or causes to be made any entry or writing that is false in any material particular, in any book, return, declaration or statement required by this Act to be kept or made; or
  - (h) unlawfully occupies land for the purpose of carrying out a Special Economic Zone activity; or
  - (i) ignites or maintains an open fire in a restricted area except under and in compliance with a burning permit issued to him, unless the fire is used only for cooking or warmth; or
  - (j) ignites or maintains an open fire in the Special Economic Zone and who -
    - (i) leaves the fire unattended; or
    - (ii) fails to extinguish the fire before leaving it, is guilty of a crime.

Penalty: A fine not exceeding K50, 000.00 or imprisonment for a term not exceeding three years, or both.

## *Special Economic Zones Authority*

- (3) A person who—
- (a) by intimidation or threat hinders or prevents a person from making an application for a license or permit under this Act; or
  - (b) for an improper purpose threatens to make an application for a license or permit under this Act; or
  - (c) participates in or is a party to an agreement or arrangement among two or more persons, under which -
    - (i) one or more of the persons agrees or undertakes not to make an application for a license or permit under this Act; or
    - (ii) particulars of an application made for a license or permit under this Act, or the amount of an offer to pay fees or bonus to the State or to the Authority are arrived at is guilty of an offence.

Penalty: A fine not exceeding K5, 000.00 or imprisonment for a term not exceeding three years, or both.

- (4) Subsection (3) does not apply to -
- (a) an agreement or arrangement made only among two or more related corporations within the meaning of the *Companies Act 1997*; or
  - (b) an application for a permit or license made jointly by two or more persons.

(5) Where a person is convicted of an offence under Subsection (3), that person, and any corporation controlled by him, is disqualified from making an application for a license or permit under this Act, either by himself or through an agent, for a period of five years commencing on and from the date of his conviction.

### **74. POWER OF SEIZURE, ETC.**

- (1) Subject to Subsection (2), an Authorized Officer may shut down an enterprise where he believes on reasonable grounds that any of the following exists:-
- (a) non-compliance with licensing terms and conditions; and
  - (b) non-compliance with an administrative directive issued by the Authority or an authorized Officer; and
  - (c) the enterprise is conducting an illegal act or a prohibited activity under this Act or any other law.

(2) A shut down of an enterprise can only occur after approval is given by the Chief Executive Officer.

(3) In the case where a shutdown occurs the Authorized Officer can seize any property which he believes is a prohibited item, or has been used in connection with an illegal activity.

(4) Immediately after a shutdown occurs or a property is seized this would automatically be treated as a dispute and be subject to the dispute resolution machinery under this Act.

### **75. ENTRY AND INSPECTION ON LAND.**

(1) The Minister, or an Authorized Officer may enter a Special Economic Zone on which activities are being carried out under a license or permit, for the purpose of -

- (a) making inspections; or

## *Special Economic Zones Authority*

(b) preventing or suppressing an illegal act, a prohibited activity or fires.

(2) A person, who obstructs or hinders the Minister, or an Authorized Officer in the exercise of his powers under Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K1,000,000.00 or imprisonment for a term not exceeding one year.

### **76. AWARD OF DAMAGES.**

A person who commits an offence against this Act is, on conviction, in addition to the penalty for the offence, liable for any loss or damage caused by the offence, and the amount of such loss or damage may be -

- (a) awarded by the court in fixing the penalty; and
- (b) recovered in the same manner as a pecuniary penalty.

### **77. PRESUMPTION AS TO PROPERTY IN SPECIAL ECONOMIC ZONE.**

Where, in any proceeding under this Act, a question arises as to whether any Special Economic Zone is the property of the Authority, the Special Economic Zone shall be presumed to be the property of the Authority until the contrary is proved.

### **78. CONDUCT OF PROCEEDINGS.**

(1) An Authorized Officer may lay information and conduct prosecutions for offences under this Act, and the Authority may sue for and recover fees, levies and charges due and payable under this Act.

- (2) In any prosecution or proceedings under this Act, proof is not required of -
- (a) the appointment of the Chief Executive Officer or an Authorized Officer; or
  - (b) any authority, general or special, of any such officer to prosecute or to take any proceeding or to sue.

## **PART XVII. - MISCELLANEOUS.**

### **79. PROTECTION OF OFFICERS.**

The Minister, the Chief Executive Office or any Authorized Officer is not personally liable for any for any matter or thing done by him in good faith in the exercise of his powers or the performance of his duties under this Act.

### **80. INDEMNITY OF MEMBER OF THE BOARD, ETC.**

A member of the Board or any committee established under this Act is not personally liable for any act done, in good faith in the course of carrying out duties of the Board or committee.

## **PART XVIII. - REPEAL.**

### **81. REPEAL.**

The Following Act is hereby repealed -

- (a) *Free Trade Zones Act 2000*; and
- (b) *Industrial Centres Development Corporation Act 1990*; and

## *Special Economic Zones Authority*

### **82. STATE CHARGES.**

In respect of any assumption by, transfer to, acquisition by, vesting in or entering into by the Authority of any assets, liabilities, right, contracts, deeds, instrument, agreements or other matters or things under this Act, any registration lodgment or other fees or amounts of any description which might be payable under any Act (other than this Act) by the corporation are not payable.

### **83. REGULATIONS.**

(1) The Authority, as the independent regulator for the zone, may regulate, operate and administer the zone for the purposes of creating a special purpose international economic center.

(2) The Authority may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular prescribing matters for and in relation to -

- (a) the establishment, development, operation and maintenance of a special economic zone including the delegation of powers, duties, functions and responsibilities of the Authority; and
- (b) the application requirements and procedures for the issuance of a special economic zone license, including the form of the application, information criteria, application fees, and applicable rules and time limits for incomplete or deficient applications; and
- (c) the application requirements and procedures for the issuance of a special economic zone user license, including the form of the application, information criteria, application fees, and applicable rules and time limits for incomplete or deficient applications; and
- (d) the revocation, cancellation, rescinding, suspension, withdrawal or variation of a special economic zone license, development or operator agreement, certificate, permit, authorization, approval, lease or agreement; and
- (e) the revocation, cancellation, rescinding, suspension, withdrawal or variation of a Special economic zone User License, certificate, permit, authorization, approval, lease or agreement; and
- (f) the manner of doing, or performing anything required by this Act to be done or performed; and
- (g) form and content of a register; and
- (h) Board and Committee procedures for voting, quorum, voting rights, powers, function, duties and responsibilities; and
- (i) the code of conduct for authorized officers, staff, employees and users of special economic zone; and
- (j) offences and penalties for breach of the Act and Regulations; and
- (k) rules and procedures for the administration of the One-Stop-Shop facility; and
- (l) rules and procedures for the administration of the memorandum of understanding applying to respective competent agencies; and
- (m) the establishment, development, operation and maintenance of a special economic zone including the delegation of powers, duties, functions and responsibilities of the Authority; and
- (n) the application requirements and procedures for the issuance of a special economic zone license, including the form of the application, information criteria, application fees, and applicable rules and time limits for incomplete or deficient applications; and



## *Special Economic Zones Authority*

- (o) the revocation, cancellation, rescinding, suspension, withdrawal or variation of a special economic zone license, development or operator agreement, certificate, permit, authorization, approval, lease or agreement; the revocation, cancellation, rescinding, suspension, withdrawal or variation a Special economic zone User License, certificate, permit, authorization, approval, lease or agreement; and
- (p) the manner of doing, or performing anything required by this Act to be done or performed; and
- (q) form and content of a register; and
- (r) Board and Committee procedures for voting, quorum, voting rights, powers, function, duties and responsibilities; and
- (s) the code of conduct for authorized officers, staff, employees and users of special economic zone; and
- (t) offences and penalties for breach of the Act and Regulations; and
- (u) rules and procedures for the administration of the One Stop Shop facility; and
- (v) the rules and procedures for the administration of the memorandum of understanding applying to respective competent agencies; and
- (w) rules and procedures in respect to the technical aspects of a special economic zone including design and construction works; and
- (x) application, consideration, grant, or rejection of a special economic zone against the Regulations; and
- (y) license, the form of the application and the amount of fees payable; and
- (z) the submission of annual and other periodic reports; and
- (za) the maintenance of books, records, accounts, and financial settlements; and
- (zb) the matters concerning customs, employment, environment, and immigration; and
- (zc) the rules and procedures governing the use of the special economic zones; and
- (zd) the rules and procedures for handling and processing administrative disputes; and
- (ze) the imposition of penalties of fines not exceeding USD\$100, 000.00 for offences against the regulations.

(3) The Regulations made by the Authority in each secular year shall continue, from coming into operation, to have full force and effect for the term for which they were granted or entered into or until they sooner expire or are revoked according to law, and shall be -

- (a) numbered in regular arithmetical series, beginning with the number one, in the order in which they are made; and
- (b) published on the Authority's website.

*Special Economic Zones Authority*

**SCHEDULE 1.**

List of Potential Special Economic Zones.

<b>No.</b>	<b>Province.</b>	<b>District.</b>	<b>Type/Activity.</b>
1	East New Britain	All	Tourism
2	West New Britain	All	General
3	Autonomous Region of Bougainville	All	Agriculture
4	National Capital District	All	General
5	Central	All	General
6	Oro	All	Tourism
7	Milne Bay	All	Tourism
8	Western	All	Agriculture
9	Gulf	All	Industrial
10	Morobe	Finschhafen	Technology
11		Markham District	Agriculture Park
12		Huon Gulf	Industry
13	Madang	All	Marine and Tourism
14	East Sepik	All	Agriculture
15	West Sepik	All	Agriculture

## Special Economic Zones Authority

16	Western Highlands	All	Agriculture and General
17	Jiwaka	All	Agriculture and General
18	Hela	All	Petroleum and General
19	Southern Highlands	All	Petroleum and General
20	Eastern Highlands	All	Agriculture

### SCHEDULE 2.

- (1) The baseline parameters for the application of the Special Economic Zone incentives package are -
- (a) AUD10 Million equivalent minimum investment; and
  - (b) Corporate tax 0 percent for 15 years; and
  - (c) Minimum number of employees is 50; and
  - (d) targeted 95 percent Papua New Guinea employment.
- (2) Further incentives will be negotiated on a case by case basis by the Special Economic Zone Authority once submitted to NEC for formal approval.

### SCHEDULE 3.

Income Tax Incentives.

No	Percent of national employees	Tax incentive
1	50% employees	50%
2	51-75% employees	70%
3	76-100% employees	80%

### SCHEDULE 4.

- (1) *Building Act* (Chapter 301).
- (2) *Harbours Act* (Chapter 240).
- (3) *National Water Supply and Sewerage Act 1986*.
- (4) *National Roads Authority Act 2003*.
- (5) *Physical Planning Act 1989*.

*Special Economic Zones Authority*

- (6) *Roads Maintenance Act* (Chapter 246).
- (7) *Customs Tariff Act 1990*.
- (8) *Excise Act 1956*.
- (9) *Excise Tariff Act 1956*.
- (10) *Employment of Non-Citizens Act 1978*.
- (11) *Employment of Non-Citizens Act 2007*.
- (12) *Harbours Board Act 1963*.
- (13) *Income Tax Act 1959*.
- (14) *Income Tax Dividend (Withholding) Tax and Interest (Withholding) Tax Rate Act 1984*.
- (15) *Independent Consumer and Competition Commission Act 2002*.
- (16) *Independent Public Business Corporation of Papua New Guinea Act 2002*.
- (17) *Insurance Act 1995*.
- (18) *Investment Promotion Act 1992*.
- (19) *Migration Act 1978*.
- (20) *Prices Regulation Act 1949*.
- (21) *Stamp Duties Act 1952*.
- (22) *Gaming Act 1959*.
- (23) *Gaming Control Act 2007*.

I hereby certify that the above is a fair print of the *Special Economic Zones Authority Act 2019*, which has been made by the National Parliament.

Acting Clerk of the National Parliament.

13 FEB 2020

I hereby certify that the *Special Economic Zones Authority Act 2019*, was made by the National Parliament on 5 December 2019 by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.

- 41 -

13 FEB 2020