

No. 13 of 2008.

Border Development Authority Act 2008.

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AN ACT

Entitled

Border Development Authority Act 2008,

Being an Act to establish the Border Development Authority to manage and fund developmental activities in the Border Provinces of Papua New Guinea and, to make provision for the functions and powers of the Authority, and for related purposes,

MADE by the National Parliament.

PART I. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

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

(a) the right to privacy conferred by Section 49 of the *Constitution*; and

(b) the right to freedom of information conferred by Section 51 of the *Constitution*,

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

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

(3) It is hereby declared that this Act is an Act to which Section 31(1)(b) of the *Organic Law on Provincial Government* applies in that it deals with a matter of urgent national importance in the national interest.

2. INTERPRETATION.

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

“Authority” means the Border Development Authority established by Section 4;

“border provinces” means provinces that are listed under Schedule 1;

“Chairman” means the Chairman of the Authority appointed under Section 5;

“consultant” includes certified practicing lawyers and accountants;

“Deputy Chairman” means the Deputy Chairman of the Authority appointed under Section 5(3);

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"member" means a member of the Authority;

"person responsible" means a person appointed by a public authority under Section 18(1), and, in relation to a public authority, means the person responsible in and for that public authority;

"public authority" means any

- (a) Department, or State Service; or
- (b) provincial government; or
- (c) authority or instrumentality or other body (corporate or unincorporated) established by or under Constitutional Law or an Act of Parliament for governmental or administrative purposes;

"this Act" includes the Regulations.

(2) Where any question arises as to whether an authority or instrumentality or other body is a public authority, the Minister may, by notice in the National Gazette, declare it to be a public authority for the purposes of this Act.

3. APPLICATION.

- (1) This Act binds the State.
- (2) The Act applies throughout the country.

PART II. - ESTABLISHMENT AND MEMBERSHIP, ETC., OF THE AUTHORITY.

4. ESTABLISHMENT, ETC., OF THE AUTHORITY.

- (1) The Border Development Authority is hereby established.
- (2) The Authority -
 - (a) is a body corporate with perpetual succession; and
 - (b) shall have a common seal; and
 - (c) may acquire, hold and dispose of property; and
 - (d) may sue and be sued in its corporate name.
- (3) All courts, Judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall presume that it was duly affixed.

5. MEMBERSHIP OF THE AUTHORITY.

- (1) The Authority shall consist of the following members:-
 - (a) a person with sound experience in the field of law, engineering, economics or management who shall be executive Chairman;
 - (b) Commissioner of Customs or his nominee;
 - (c) Departmental Head for the Department of Finance or his nominee;
 - (d) Departmental Head for the Department of Foreign Affairs or his nominee;
 - (e) Departmental Head for the Department of Works or his nominee;

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- (f) a provincial administrator representing provincial administrators of the border provinces;
 - (g) a person representing Institute of Engineers;
 - (h) a person representing the PNG Chamber of Commerce;
 - (i) a person representing the community.
- (2) The members of the Authority -
- (a) shall be appointed by the National Executive Council, by notice in the National Gazette, on the recommendation of the Minister responsible; and
 - (b) in the case of an appointment under Section 4(1)(a), the member shall hold office for a term not exceeding four (4) years; and
 - (c) in the case of an appointment under Section 5(1)(f), the member shall hold office for a term not exceeding three (3) years provided that the appointment shall be on a rotation basis amongst provincial administrators of the border provinces; and
 - (d) in the case of an appointment under Section 5(1)(i), the member shall be a female and shall hold office for a term not exceeding three (3) years; and
 - (e) shall be entitled, in the case of members who are not officers of the National Public Service, to such fees and allowances as are fixed from time to time under the *Boards (Fees and Allowances) Act 1955*.
- (3) The members shall elect one amongst them to be the Deputy Chairman.

6. APPLICATION OF THE LEADERSHIP CODE.

Pursuant to Section 26(3) (Application of Division 2) of the *Constitution*, the office of a member of the Board is declared to be a public office to and in relation to which Division III.2 (Leadership Code) of the *Constitution* applies.

7. LEAVE OF ABSENCE.

The Minister may grant leave of absence to a member of the Authority.

8. DECLARATION OF OFFICE.

A member shall, before entering on the duties of his office, make or subscribe before the Minister, or a person authorized by the Minister for that purpose, an oath or affirmation of office in the form specified in Schedule 2.

9. RESIGNATION.

A member may resign his office by writing signed by him and delivered to the Minister.

10. VACANCY NOT TO AFFECT POWERS AND FUNCTIONS.

The exercise of a power or performance of a function of the Authority under this Act is not invalidated by reason only of a vacancy in the membership of the Authority.

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11. DISCLOSURE OF INTERESTS.

(1) A member who has a direct or indirect interest in a matter being considered or about to be considered by the Authority shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of the interest at a meeting of the Authority.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the meeting of the Authority and, unless the Minister or the Authority determines otherwise, the member shall not -

- (a) be present during any deliberation of the Authority with respect to that matter; or
- (b) take part in any decision of the Authority with respect to that matter.

12. MEETINGS OF THE AUTHORITY.

(1) The Authority shall hold such meetings as are necessary for the efficient performance of its functions and at such times and places as it determines or as the Chairman or, in his absence, the Deputy Chairman directs, but in any event, shall meet not less frequently than once in each month.

(2) The Chairman -

- (a) may at any time, convene a meeting of the Authority; and
- (b) shall on receipt of a written request signed by not less than two other members of the Authority, convene a meeting of the Authority.

(3) Subject to Subsection (4), the Chairman shall preside at all meetings of the Authority.

(4) Where the Chairman is not present at a meeting of the Authority, the Deputy Chairman shall preside.

(5) At a meeting of the Authority -

- (a) the Chairman or Deputy Chairman and three members are a quorum; and
- (b) matters arising shall be decided by a majority of votes of the members of the Authority present and voting; and
- (c) the person presiding has a deliberative and, in the event of an equality of votes on any matter, also a casting vote.

(6) The Authority shall cause minutes of its meetings to be recorded and kept.

(7) Subject to this Act, the procedures of the Authority are as determined by the Authority.

13. REPORTS.

(1) The Authority shall furnish to the Minister a report on the progress and performance of the Authority in relation to its functions before 31 March in each subsequent year after coming into operation of this Act, in respect of the year ending 31 December preceding, and the Minister shall table such report at the first sitting of the National Parliament after the date of his receipt of it.

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(2) The Authority shall also furnish to the Minister such other reports as the Minister may require at such intervals as the Minister may determine.

14. SECRETARIAT AND SUPPORT STAFF.

(1) The Authority may recommend to the Minister to appoint persons to be officers of the Authority to provide secretarial services to the Authority.

(2) The Minister shall, by notice in the National Gazette, appoint suitably qualified persons to act as support staff to the Authority.

(3) A person appointed under Subsection (2), who is not an officer of the National Public Service, shall be paid such fees and allowances as are determined by the Minister after consultation with the Salaries and Conditions Monitoring Committee.

(4) A person appointed under Subsection (2) who is an officer of the National Public Service -

(a) shall be deemed to have been seconded to the support staff of the Authority; and

(b) shall, during his period of deemed secondment, be paid his salary and other entitlements by the Department by which, immediately prior to his deemed secondment, he was employed.

(5) The service on the support staff of the Authority of an officer shall be counted as service in the National Public Service for the purpose of determining his rights (if any) in respect of -

(a) leave of absence on the grounds of illness; and

(b) furlough or pay in lieu of furlough (including pay to dependants on the death of the officer).

PART III. - FUNCTIONS AND POWERS, ETC., OF THE AUTHORITY.

15. FUNCTIONS OF THE AUTHORITY.

The functions of the Authority generally are to consult with relevant agencies and to supervise and co-ordinate all developmental activities in each of the border provinces and, without prejudice to the generality of the foregoing, are -

(a) the co-ordination of the planning, and implementation of capital works, infrastructure and socio economic programs in respect to -

(i) education, health care, road network, communication, transport system, electricity, water, sewerage and all activities relevant to the improvement of basic living standards in the border provinces;

(ii) liaison with public bodies, non-Government organizations and private enterprise in identifying and negotiating sources of funding for short to medium term activities; and

(iii) the co-ordination of the development of specifications for contracts for all capital and infrastructure works and the advertising, evaluation and awarding of such contracts; and

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- (iv) the supervision and monitoring of the implementation of all contracts relating to such capital and infrastructure works; and
 - (v) the transformation of border provinces into agro financial sector by developing their respective natural resources; and
 - (vi) the promotion of investors both foreign and local into the border provinces and to encourage and facilitate international cross border and border trade.
- (b) the establishment of programs and regulatory framework for immigration including the monitoring of immigrants and immigrant activity along the border with respect to
- (i) establishment of proper state of the art offices, and facilities for relevant government agencies including customs, immigration, quarantine, police, defence force such as security monitoring systems, communication, transport, electricity, water, sewerage, staff accommodation, computers and all other facilities that would be relevant to the administration of border activities; and
 - (ii) establishment of dialogue and co-operation with the respective cross border authority or government for the prevention of diseases, drug trafficking, human smuggling, money laundering and other illicit activities.
 - (iii) the development of long term activities for the establishment of infrastructure and other facilities; and
- (c) such other functions as are likely to assist in the border administration activities.

16. POWERS OF THE AUTHORITY.

(1) The Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Act and may require a public authority to provide to it such particulars, as the Authority may determine, relating to that public authority or its functions which affect any of the functions of the Authority.

(2) Where in the opinion of the Authority -

- (a) any information, books or records in the possession of or under the authority of a public authority is or are relevant to the exercise or performance of the powers or functions of the Authority under this Act or to the achievement of the purposes of this Act; and
 - (b) it is desirable that the information be given to the Authority or that the books or records be made available for inspection by the Authority,
- the Authority may issue to the person responsible in that public authority a written notice to that effect under the hand of the Chairman specifying the relevant information, books and records and specifying the place and time at which any information, books and records are to be furnished or produced.

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

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(4) The provisions of Subsection (3) do not affect the operation of any law by or under which any information, book or record is to be kept confidential.

PART IV. - OBLIGATIONS OF PUBLIC AUTHORITIES, ETC.,

17. GENERAL OBLIGATIONS.

All public authorities and all governing bodies (by whatever name known), executives, Departmental Heads, officers and employees of public authorities shall assist and co-operate with the Authority in the performance of the functions and powers of the Authority under this Act.

18. LIAISON OFFICERS.

(1) A Public Authority shall appoint a person to be responsible for liaison with the Authority, for the purposes of ensuring and facilitating co-operation with the Authority, a public authority shall appoint a person employed by it for the purposes of this Act.

(2) A person appointed under Subsection (1) shall be of a level of not less than that of Assistant Secretary within the National Public Service or the equivalent.

(3) A person appointed under Subsection (1) is responsible for -

- (a) liaison between the public authority by which he is employed and the Authority; and
- (b) ensuring that all directions and correspondence from the Authority are brought, as expeditiously as possible, to the appropriate person within that public authority.

(4) The management of a public authority shall ensure that every assistance is given to the person responsible to enable him to carry out his duties under this Act.

19. MISCONDUCT - FAILURE TO CO-OPERATE WITH AUTHORITY.

(1) Failure to co-operate with the Authority amounts to misconduct in office.

(2) Where a public authority fails to co-operate with the Authority in the performance by the Authority of its functions and powers under this Act -

- (a) in the case of a public authority other than a Department - every person involved in the failure to co-operate is considered to have been guilty of misconduct or misbehaviour and where misconduct or misbehaviour is grounds for dismissal or removal from office, is liable to dismissal or removal from office; and
- (b) in the case of a Department - the Departmental Head and every officer concerned is guilty of negligence in the discharge of his duties under Section 50(e) of the *Public Services (Management) Act 1995*.

(3) For the purposes of Subsection (2), a public authority or a person employed by a public authority fails to co-operate with the Authority if it or he fails, within a reasonable time -

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- (a) to comply with a notice issued by the Authority under Section 16(2); or
- (b) to comply with a direction by the Authority; or
- (c) to answer correspondence from the Authority; or
- (d) otherwise, to assist the Authority in the performance of its functions to the extent that such assistance is within the functions and powers of that public authority or person.

PART V. - FINANCE.

20. APPLICATION OF PUBLIC FINANCES (MANAGEMENT) ACT 1995.

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

PART VI. - MISCELLANEOUS.

21. PROTECTION FROM PERSONAL LIABILITY.

The Chairman, Deputy Chairman or a member of the Authority is not personally liable for any act or default of himself or the Authority done or omitted to be done in good faith in the course of the operations of the Authority or for the purposes of this Act.

22. CONFIDENTIALITY.

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

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

(3) For the purposes of Subsection (1), the disclosure of information by a person for the purposes of performing that person's functions as a -

- (a) person providing secretarial services to the Authority under Section 13; or
- (b) member of the support staff of the Authority; or
- (c) member of the Authority,

shall be considered authorized use and disclosure of the information.

23. REGULATIONS.

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

