

No. 21 of 2022.

Manus Special Economic Region Act 2022.

Certified on : 16 MAY 2022



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No. 21 of 2022.

AN ACT

entitled

Manus Special Economic Region Act 2022,

Being an Act -

- (a) to establish the ***Manus Special Economic Region Authority***, and to provide for its functions and powers; and
- (b) to provide for the creation of a Manus Special Economic Region, and for related purposes,

MADE by the National Parliament to come into operation -

- (a) in respect of Part VIII, 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; and
- (b) in respect of the remainder of the Act, upon date of certification.

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.

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2. INTERPRETATION.

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

“Accounting officer” includes every officer and servant who is charged with the duty of collecting, receiving, or accounting for, or who in fact collects, receives or accounts for, any money of the Fund, or who is charged with the receipt, custody or disposal of, or the accounting for, any store and property of the Authority or who in fact receives, holds or disposes of such store and property;

“Authority” means the Manus Special Economic Region Authority;

“Bank” means the Central Bank established under the *Central Banking Act 2002*;

“Board” means the Board established under Section 8;

“Certificate” means a certificate granted under Section 35;

“Chairman” means the Chairman appointed under Section 11;

“company” means a company as defined in the *Companies Act 1997* or an overseas company as defined in that act;

“dependant” in relation to an officer or servant of the Authority, means the spouse, parent, children, including adopted children or step-children, or such other person as may be specified by the Authority with the consent of the Minister from time to time by notice published in the National Gazette;

“Fund” means the Fund established under Section 29;

“Manus” means the province of Manus as declared under the *Organic Law on Provincial Boundaries*;

“Manus Special Economic Region Company” means a company in respect of which a certificate is in force under Section 35;

“MSERC” means a Manus Special Economic Region Company;

“Region” means Manus Province;

“Registrar” means the Registrar of Companies under the *Companies Act 1997*.

3. APPLICATION OF THIS ACT.

(1) This Act binds the State.

(2) Where, by or under any other Act, the Head of State may, acting on advice of the National Executive Council in consultation with the Minister, give directions to the Authority as to policy or any such directions that may not be inconsistent with the provisions of this Act.

PART II. - ESTABLISHMENT, FUNCTIONS, POWERS, ETC., OF MANUS SPECIAL ECONOMIC REGION AUTHORITY.

4. ESTABLISHMENT OF THE AUTHORITY.

(1) The Manus Special Economic Region Authority is hereby established.

(2) The Authority -

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

(b) has a common seal; and

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

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

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

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(4) For the purposes of the *Land Act 1996*, the purposes of the Authority are a public purpose within the meaning of that Act.

5. FUNCTIONS OF THE AUTHORITY.

The functions of the Authority shall be -

- (a) to administer, enforce, carry out and give effect to the provisions of this Act and any other laws and to ensure that such laws are complied with; and
- (b) to exercise, discharge and perform such powers, duties and functions under the laws referred to in Paragraph (a); and
- (c) to maintain the good repute of Manus as an international, business and financial centre; and
- (d) to carry out research and commission studies on business, investment and financial services in Manus; and
- (e) to make recommendations for the creation and improvement of any facility likely to enhance the attraction of Manus as a centre for business and investment; and
- (f) to co-operate with Papua New Guinea and Manus financial institutions and professional and industry associations in Manus to promote and provide financial services and to foster high standards for Manus business services; and
- (g) to advise and make recommendations to the Minister on matters relating to Manus business services; and
- (h) to carry out all such activities and to do all such things as are necessary or advantageous and proper for the administration of the Authority, or for such other purposes as may be directed by the Minister.

6. POWERS OF THE AUTHORITY.

(1) The Authority shall have power to do all things reasonably necessary for, or incidental to the performance of its functions and, in particular, but without prejudice to the generality of this subsection -

- (a) to appoint such agents as it deems fit for the purpose of performing its functions; and
- (b) to impose fees or any other charges it deems fit for giving effect to any of its functions or powers; and
- (c) to do such other things as it deems fit to enable it to carry out its functions and powers effectively.

(2) The Authority may, with the prior written approval of the Minister, establish or participate in any body corporate -

- (a) for the purpose of promoting research and training in relation to offshore financial services; or
- (b) for the purpose of enhancing the development of infrastructure or economic development in Manus,

if such establishment or participation is expedient or reasonably necessary for, or incidental to the performance of the Authority's functions provided under this Act or any other laws.

7. RESERVATION OF LAND FOR PURPOSES OF THE AUTHORITY.

(1) The Minister responsible for lands matters, acting on advice, may, by notice in the National Gazette, commit to the care, control and management of the Authority an area of land that has been reserved from lease or further lease under Section 49 of the *Land Act 1996* for a place for -

- (a) an area required by the Authority to establish any infrastructure including, but not limited to port facilities, roads, airport and related infrastructure, schools, health facilities, recreation and sporting facilities, tourism facilities; and

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(b) any other purpose of the Authority conferred under this Act or any other law.

(2) Notwithstanding Section 52 of the *Land Act 1996*, where Government land is reserved under Subsection (1) -

- (a) a special purposes lease over the land for a term of 99 years and free of obligation to pay rent or royalties, shall be issued and registered in the name of the Authority; and
- (b) Sections 50, 51, 100(2) and 100(6) of the *Land Act 1996* shall not apply.

PART III. - THE BOARD.

8. THE BOARD.

(1) The Manus Special Economic Region Board is hereby established.

(2) The Board shall direct the affairs of the Authority and shall otherwise perform such functions and exercise such powers as are given to it in this Act or any other law.

9. MEMBERSHIP OF THE BOARD.

(1) The Board shall consist of -

- (a) the Departmental Head of the department responsible for commerce and industry matters, *ex-officio*, or his nominee; and
- (b) the Departmental Head of the department responsible for national planning and monitoring matters, *ex-officio*, or his nominee; and
- (c) the Departmental Head of the department responsible for intergovernmental relations, *ex-officio*, or his nominee; and
- (d) the Provincial Administrator of Manus, *ex-officio*, or his nominee; and
- (e) two persons representing the Papua New Guinea Chamber of Commerce and Industry Inc. appointed in accordance with the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*; and
- (f) two persons representing the Manus Provincial Executive Council appointed in accordance with the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*.

(2) Where a nominee is appointed as a member by an *ex-officio* member under Subsection (1)(a), (b), or (c), and that nominee ceases to hold office in the relevant department or is otherwise unable to act, the Departmental Head shall advise the minister and nominate another officer to be a member in accordance with this Act.

10. ELIGIBILITY TO BE A MEMBER OF THE BOARD.

(1) A person shall not be appointed or remain as a member of the Board if he -

- (a) is or has been bankrupt, or has applied to take the benefit of any law for the benefit of bankrupt or insolvent debtors, or has compound with his creditors or made assignment of his remuneration for their benefit; or
- (b) is 70 years of age or over; or
- (c) is standing or to stand trial for, or has been convicted of, any offence punishable under a law by imprisonment; or
- (d) is prohibited from being a director or member or promoter of, or from taking part (in any way, whether directly or indirectly) in the management of a company under any law; or
- (e) is medically unfit.

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- (2) In addition to the requirements under Subsection (1), a member of the Board shall -
- (a) be ordinarily a resident in the country; and
 - (b) be of generally recognised standing, experience and expertise in matters relevant to the financial and human resources functions of the Authority, including, but not limited to business and financial management or corporate governance.

11. CHAIRMAN AND DEPUTY CHAIRMAN.

(1) The Minister shall, by a notice in the National Gazette, and on the recommendation of the members of the Board, appoint one of the members to be the Chairman of the Board and one other member to be the Deputy Chairman of the Board for a period of two years.

(2) The Chairman and Deputy Chairman shall hold office as Chairman and Deputy Chairman until the expiration of their respective appointments or until they cease to be members, whichever first occurs.

12. ALTERNATE MEMBERS.

(1) For each of the members appointed under Section 9(1)(e) and (f), an alternate member shall be appointed in the same way and subject to the same conditions as the member for whom he is the alternate.

(2) In the event of the absence or inability of the member for whom he is the alternate to act in relation to a matter or to exercise and perform his powers, functions, duties and responsibilities under this Act, the alternate member has and may exercise and perform all the powers, functions, duties and responsibilities of the member, and this Act applies accordingly.

(3) Except as provided in Subsection (2), an alternate member may, unless the Board otherwise directs, attend all meetings of the Board, but shall not take part in debate, vote on any matter or be counted towards a quorum.

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

13. LEAVE OF ABSENCE OF MEMBERS.

(1) The Chairman may grant leave of absence to a member on such terms and conditions as the Chairman determines.

(2) The Minister may grant leave of absence to the Chairman or Deputy Chairman on such terms and conditions as the Minister determines.

14. VACATION OF OFFICE.

(1) A non *ex-officio* member may resign from office in writing signed by him and delivered to the Minister.

(2) If a non *ex-officio* member dies, resigns from office or is otherwise terminated in accordance with this section, his office becomes vacant.

(3) If a non *ex-officio* member -

- (a) is absent, except with the written consent of the Minister or Chairman in accordance with Section 15, from three consecutive meetings of the Board; or
- (b) becomes a person who is not eligible under Section 10 to be a member of the Board; or

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(c) otherwise becomes incapable of performing his duties, his appointment as a member of the Board (and as Chairman or Deputy Chairman, if the member is also the Chairman or Deputy Chairman) terminates with immediate effect and, he shall cease to be a member of the Authority.

(4) The Minister, acting on the advice and recommendation of the Board but not otherwise, may at any time, by written notice, advise a member that he intends to recommend the termination of his appointment on the grounds of inefficiency, incapacity, misbehaviour or misconduct in office.

(5) The notice under Subsection (4) shall specify the details of the grounds for termination, including but not limited to -

- (a) undisclosed interest as provided in Section 16; or
- (b) disclosure of information which is confidential to the Board as provided in this Act.

(6) Within 14 days of receiving a notice under Subsection (4), the member may reply in writing to the Minister, who shall consider the reply and, where he considers it appropriate, may recommend to the National Executive Council that the member's appointment be terminated by written notice to the member.

(7) Where the member referred to in Subsection (4) does not reply in accordance with Subsection (5), the Minister may recommend to the National Executive Council that the member's appointment be terminated by written notice to the member.

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

15. MEETINGS OF THE BOARD.

(1) The Board shall meet as often as the business of the Board requires and at such times and places as the Chairman directs, but in any event shall meet not less frequently than once in every three months.

(2) At a meeting of the Board -

- (a) a quorum consists of five members, at least two of whom are *ex-officio* members; and
- (b) the Chairman, or in his absence the Deputy Chairman, shall preside; and
- (c) subject to Paragraph (e), each member of the Board has one vote; and
- (d) matters arising are decided by a majority of the votes of the members present and voting; and
- (e) the person presiding has a deliberative, and in an equality of votes on a matter, a casting vote.

(3) The regulations may make further provision for the calling of meetings and special meetings of the Board and the procedures to be followed at those meetings.

(4) Subject to this Act, the procedures of the Board are as determined by the Board.

(5) The Board may invite the Managing Director to attend a board meeting as and when required.

16. DISCLOSURE OF INTEREST.

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

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- (2) A disclosure under Subsection (1) shall be recorded in the minutes of the relevant meeting of the Board, and the member making the disclosure shall -
- (a) not participate in any debate, deliberation, decision or vote of the Authority in relation to the matter during the meeting at which the disclosure is made or at any other meeting of the Authority; and
 - (b) be disregarded for the purpose of determining whether a quorum is present for the meeting of the Authority at which the disclosure is made or at any other meeting of the Authority for any such debate, deliberation, decision or vote in relation to the matter.

17. ANNUAL REPORT.

(1) Within three months after 31 December in each year, the Managing Director shall furnish to the Board a report on the progress, performance and finances of the Authority in relation to its functions during the year ended 31 December previously, including but not limited to the following matters:

- (a) the audited financial statements for that year, together with the report of the Auditor-General on those statements; and
- (b) a disclosure of all funding received by source and expended by the Authority by type of expenditure; and
- (c) any policy directions issued by the Minister under Section 3(2); and
- (d) any Administrative Orders made by the Authority during the year ending 31 December previously; and
- (e) any appointment, termination or vacation of office of a member of the Board occurring during the year ending 31 December previously.

(2) Upon receiving the report referred to in Subsection (1), the Board shall forward the report to the Minister who shall forward -

- (a) the report to the Speaker for presentation to the National Parliament; and
- (b) a copy of the report to the Manus Provincial Government.

(3) The Administrative Orders may make further provision for matters to be included in a report under this section.

PART IV. - STAFF OF THE AUTHORITY.

18. STAFF OF THE AUTHORITY.

(1) The Managing Director, the Deputy Managing Director and the employees of the Authority appointed under this Part constitute the staff of the Authority.

(2) The staff of the Authority are not officers in the National Public Service.

(3) The Authority shall make further Administrative Orders in accordance with this Part to govern the eligibility, qualifications, process of selection, method of appointment, terms and conditions of employment, discipline, suspension and dismissal of staff of the Authority.

19. MANAGING DIRECTOR.

(1) There shall be a Managing Director of the Authority whose manner of appointment, suspension and dismissal are under the *Regulatory Statutory Authorities (Appointments to Certain Offices) Act 2004*.

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- (2) The Managing Director -
- (a) is the chief executive officer of the Authority and the head of staff of the Authority; and
 - (b) holds office under a contract of employment for a period of four years on such terms and conditions as are determined by the Authority, subject to the *Salaries and Conditions Monitoring Committee Act 1988*, and is eligible for re-appointment; and
 - (c) is responsible to the Authority for the general working and efficient conduct of the Authority and of its financial and human resources affairs in accordance with this Act and any directions from the Authority; and
 - (d) is responsible to the Board for the efficient implementation, in accordance with this Act and of any policy directions given to the Board under Section 6; and
 - (e) has such other functions, powers and duties as are required of him under this Act or any other law, or as the Board may determine from time to time.

20. APPOINTMENT OF THE MANAGING DIRECTOR.

The Managing Director -

- (a) shall be appointed by the Head of State, acting on advice of the National Executive Council, by notice in the National Gazette; and
- (b) shall be appointed for a term of four years under the *Regulatory Statutory Authorities (Appointments to Certain Offices) Act 2004* and, subject to the *Salaries and Conditions Monitoring Committee Act 1988*, on such terms and conditions as are determined by the Head of State; and
- (c) is eligible for reappointment, but not for not more three consecutive terms.

21. TERMINATION AND SUSPENSION OF THE MANAGING DIRECTOR.

The Managing Director shall be terminated or suspended if he -

- (a) becomes incapable, for any reason, of performing his duties; or
- (b) other than with the written consent of the Board, engages in any paid employment or carries on business outside the duties of his office; or
- (c) becomes bankrupt, applies to take the benefits of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his salary for their benefit; or
- (d) is convicted of an offence that is punishable under a law by imprisonment; or
- (e) ceases to be ordinarily resident in the country; or
- (f) commits an offence against this Act or any law regulating private sector investment.

22. FUNCTIONS OF THE MANAGING DIRECTOR.

- (1) The functions of the Managing Director include, but are not limited to -
- (a) head of the staff of the Authority; and
 - (b) manages the day to day affairs of the Authority; and
 - (c) directs and controls the staff; and
 - (d) reports to the Board on matters concerning the Authority; and
 - (e) performs such other functions determined under this Act or any other law.
- (2) The Managing Director -
- (a) shall carry out and perform the functions, powers and duties required of him under this Act and his contract of employment; and
 - (b) has such other functions, powers and duties as the Board may determine from time to time.

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(3) The Managing Director may, by instrument in writing, delegate all or any of his functions, powers (other than this power of delegation) or duties to any person and shall report any delegation to the Board in writing.

23. EXPIRY OF TERM OF THE MANAGING DIRECTOR.

(1) Not less than three months before the term of office of the Managing Director is due to expire, the Board shall, after consultation with the Minister, determine whether -

- (a) to renew the contract of the Managing Director; or
- (b) to seek alternative candidates for consideration in accordance with Section 24.

(2) Where the Authority determines to renew the contract of the Managing Director, the Minister shall recommend to the National Executive Council that the Managing Director's appointment be renewed.

(3) On receipt of the Minister's recommendation under Subsection (2), the National Executive Council may -

- (a) advise the Head of State to renew the appointment; or
- (b) reject the recommendation, in which case the Authority shall re-advertise the position according to Section 24.

(4) Where the contract of the Managing Director has expired and has not yet been renewed, or no new appointment has yet to be made under Section 24, the Managing Director shall continue to act until the renewal or new appointment has taken place.

24. DEPUTY MANAGING DIRECTOR.

(1) There shall be a Deputy Managing Director of the Authority who shall undertake such responsibilities in accordance with this Act as may be required by the Managing Director, and who shall act for the Managing Director in any case where -

- (a) the Managing Director is absent or unable, for any reason, to undertake his duties; or
- (b) the office of the Managing Director is vacant pending a new substantive appointment,

in accordance with Section 9 of the *Regulatory Statutory Authorities (Appointments to Certain Offices) Act 2004*.

(2) Where -

- (a) the office of Deputy Managing Director is or is likely to become vacant; or
- (b) the Board refuses a nomination under Subsection (3); or
- (c) the Managing Director resolves under Subsection (3) or (4) to proceed again under this subsection,

the Board shall -

- (a) by notice in the National Gazette published in at least one newspaper circulating generally in Papua New Guinea, declare the office vacant, likely to become vacant or due to become vacant, as the case may be; and
- (b) invite applications for appointment to the office; and
- (c) prepare a list from the applications received of suitable candidates; and
- (d) nominate his selection for the position to the Board.

(3) Upon receipt of the nomination under Subsection (2), the Board may -

- (a) accept the nomination, in which case, it shall forward the name to the Public Services Commission for its approval; or

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(b) refuse the nomination, in which case, the Board may select another candidate from the list of suitable candidates and nominate his selection to the Board, or proceed again in accordance with Subsection (2).

(4) Where the Public Services Commission approves the nomination under Subsection (3)(a), the Board shall submit the nomination to the Minister for recommendation to the National Executive Council.

(5) The National Executive Council may -

(a) approve the recommendation and make the appointment; or

(b) reject the recommendation, in which case, the matter shall be returned to the Board which may select another candidate from the list of suitable candidates and nominate his selection to the Board, or declare the office vacant and proceed again in accordance with Subsection (2).

(6) Where the Public Services Commission does not approve the nomination, the Board shall notify the Managing Director who may select another candidate from the list of suitable candidates and nominate his selection to the Board, or proceed again in accordance with Subsection (2).

(7) The Administrative Orders may make further provision for procedures to be followed under this section.

25. EMPLOYEES OF THE AUTHORITY.

(1) The Managing Director may, within the limit of funds available for the purpose, appoint, as employees of the Authority, persons as the Authority considers necessary for the purposes of giving effect to this Act.

(2) Employees appointed under Subsection (1) shall be appointed on such terms and conditions as the Authority, subject to the *Salaries and Conditions Monitoring Committee Act 1988*, shall determine.

26. PRIOR SERVICE.

Where an officer or employee of the Public Service is appointed to be the Chief Trade Officer or staff of the Office, his service as a staff of the Office shall be counted as service in the Public Service for the purpose of determining his terms and conditions (if any) under the *Public Services (Management) Act 1995*.

27. CONTRACTORS, CONSULTANTS, ETC.

The Managing Director may, within the limit of funds available, appoint as employees of, or contractors to, the Authority, technical advisors and consultants on any matter in relation to its functions as he considers necessary, on terms and conditions which are determined by the Managing Director.

PART V. - FINANCES OF THE AUTHORITY.

28. APPLICATION OF THE *PUBLIC FINANCES (MANAGEMENT) ACT 1995*.

(1) The Authority and any subsidiary corporations are public bodies for the purposes of the *Public Finances (Management) Act 1995*.

(2) Without limitation to any function or power of the Authority under this Act, Section 39A and Part VIII (other than Sections 57 and 58) of the *Public Finances (Management) Act 1995* apply to and in relation to the Authority.

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(3) Subject to Subsection (2), the *Public Finances (Management) Act 1995* does not apply to or in relation to the Authority.

(4) Where the *Public Finances (Management) Act 1995* is silent on any matter related to the management of the finances of the Authority, the regulations may make provision for that matter.

29. FUNDS OF THE AUTHORITY.

- (1) The funds of the Authority shall consist of -
- (a) monies appropriated by law for the purposes of carrying out or giving effect to this Act; and
 - (b) monies received for goods and services provided by the Authority; and
 - (c) monies received in respect of rents, fees, charges, bonds and other sums payable under this Act or any other law; and
 - (d) monies received in respect of the sale or lease of items forfeited and other payments made under this Act or any investment law; and
 - (e) grants, donations, subscriptions, credits or other contributions, whether from within or outside Papua New Guinea, including contributions from international organisations or from a government, government department, government instrumentality or statutory entity of a country other than Papua New Guinea; and
 - (f) borrowings by the Authority in accordance with Section 31; and
 - (g) 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
 - (h) any other monies received by the Authority in accordance with law.
- (2) The funds of the Authority may be expended only -
- (a) in payment or discharge of expenses, obligations and liabilities of the Authority; and
 - (b) in payment of the remuneration of the staff of the Authority and of allowances to the members of the Authority; and
 - (c) in making investments authorised by this Act; and
 - (d) for such other purposes authorised by this Act or the regulations or consistent with the functions of the Authority as the Authority, after consultation with the Managing Director, may determine.

30. INVESTMENTS.

- (1) Monies of the Authority which are not immediately required may be invested -
- (a) in accordance with law; and
 - (b) for a period not exceeding 12 months; and
 - (c) in a manner which ensures appropriate capital guarantees; and
 - (d) at a known and acceptable rate of return, being a rate not less than the Singapore Interbank Offer Rate (SIBOR) at the time of lodging the investment.

(2) The regulations may make further provision for investing monies of the Authority in accordance with the requirements of Subsection (1).

31. BORROWINGS.

(1) Subject to Subsection (2), the Authority may borrow money for its purposes from a bank licensed under the *Banks and Financial Institutions Act 2000* or from a bank licensed under the corresponding law of another country in any manner, including by overdraft in accordance with the provisions of Sections 55 and 56 of the *Public Finances (Management) Act 1995*.

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(2) No money may be borrowed unless the Authority has certified that the sum to be borrowed does not exceed the debt servicing capacity of the Authority as established by audited financial statements of the Authority which are not more than 12 months old.

(3) Where the Authority makes a fraudulent certification under Subsection (2), each member present at the meeting which resolved to make the certification is jointly and severally liable for the certification.

(4) The regulations may make further provisions for investing monies of the Authority in accordance with the requirements of this section.

32. ACCOUNTING, RECORDS AND REPORTS.

(1) For the purposes of Section 62(1) of the *Public Finances (Management) Act 1995*, the Authority shall keep its accounts and records in accordance with the accounting principles generally applied in commercial practice.

(2) The Authority shall cause its accounts to be audited every six months in accordance with the requirements of Part III of the *Audit Act 1989* and Section 63 of the *Public Finances (Management) Act 1995*.

(3) Upon completion of the audit for each financial year, the Authority shall assess the amount of revenue (if any) standing to the credit of the Authority, and return to the Consolidated Revenue all surplus recurrent revenue other than -

- (a) an amount equivalent to the budgeted recurrent and operational expenses for one quarter; and
- (b) such funds as the National Executive Council agrees shall be retained by the Authority for specified purposes.

33. BUDGET AND TAXATION.

(1) The Managing Director shall, no later than five months before the commencement of each financial year, submit to the Authority for its approval -

- (a) an annual plan for that financial year which conforms to the priorities (if any) issued to it under Section 5; and
- (b) a budget which consists of estimates of receipts, borrowings and expenditure for that financial year.

(2) Where the Authority approves the Annual Plan and budget, it shall forward them to the Minister for his approval, and the Minister may -

- (a) approve the annual plan and the budget; or
- (b) return one or both of them to the Authority for amendment.

(3) Where the Minister approves the Annual Plan and budget under Subsection (2), he shall submit to the Minister responsible for Treasury matters a budget consisting of -

- (a) the Authority's receipts of funds under Section 32(1), excluding those received under Section 32(1)(a) and (e); and
- (b) proposed borrowings by the Authority under Section 31; and
- (c) the Authority's expenditure of the funds and monies referred to in Paragraphs (a) and (b).

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- (4) Where the Minister responsible for Treasury matters is satisfied as to the budget under Subsection (3) -
- (a) he shall table it in the Parliament as soon as practicable, and in any event within seven sitting days of the Parliament; and
 - (b) it is subject to disallowance in whole or in part by decision of the Parliament taken within seven days of their tabling; and
 - (c) where the Parliament has not disallowed it within seven days of their tabling, it is deemed to have authorised the expenditure identified in the budget.
- (5) Where the Minister approves the revised budget submitted to him under Subsection (2) -
- (a) the Minister responsible for Treasury matters shall table it in the Parliament as soon as practicable, and in any event within seven sitting days of the Parliament; and
 - (b) it is subject to disallowance in whole or in part by decision of the Parliament taken within 7 days of its tabling; and
 - (c) where the Parliament has not disallowed it within seven days of its tabling, it is deemed to have accepted the revised budget and authorised the expenditure identified in it.
- (6) Nothing in this section shall be construed as limiting an amount that may be appropriated to the Authority from the Consolidated Revenue Fund.
- (7) For the purposes of Section 24(1) of the *Income Tax Act 1959*, the Authority is a public authority constituted under this Act.

PART VI. - ONE STOP SHOP.

34. POWERS OF THE AUTHORITY IN RELATION TO OTHER LAWS.

- (1) In this section “decision maker” means any Minister, authority, agency or other person having the power under law to make an administrative decision affecting a person.
- (2) Regulations may provide for the Authority to exercise powers conferred by other laws on national or provincial decision makers other than the Authority.
- (3) The Authority may only exercise powers under Subsection (2) after consultation with the decision maker under the other laws referred to in Subsection (2).
- (4) The Authority may only exercise such powers in relation to an MSERC, their officers, employees and contractors.

PART VII. - MANUS SPECIAL ECONOMIC REGION COMPANIES.

35. APPLICATION FOR MANUS SPECIAL ECONOMIC REGION CERTIFICATES.

- (1) An applicant who proposes to become a Manus Special Economic Region Company may submit an application, in the prescribed form, and on payment of the prescribed fee, to the Authority for consideration and granting of a certificate 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, the Regulations or in an administrative order made under this Act.

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36. FINAL DETERMINATION.

(1) After the conclusion of the approval process and within two months after the submission of the application, the Authority shall make a final determination that either approves the issue of a certificate to the applicant or refuses the application.

(2) The final determination that sets out the terms of the certificate shall be published in the National Gazette and shall include -

- (a) a statement of the reasons, together with the legal basis, for the final determination; and
- (b) the specific terms and conditions attached to the certificate; and
- (c) a brief description of the business activity to be undertaken, including the locations at which the activity will be carried out; and
- (d) the name of the holder of the certificate.

37. REGULATION TO PROVIDE FOR CRITERIA.

(1) The regulations may provide for criteria to be used by the Authority in deciding whether to grant a certificate following an application.

(2) These regulations may be of general application or may relate to a particular sector, industry or location within Manus.

38. VARIATION.

A MSERC granted a certificate may apply to the Authority in the prescribed form and on payment of the prescribed fee for a variation of -

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

39. CANCELLATION OF CERTIFICATION.

(1) Where the Minister, after receiving a report from the Authority, is of the opinion -

- (a) that a MSERC certified under Section 43 obtained a certificate by fraud or misrepresentation; or
- (b) that a MSERC, or an owner, officer or business partner of a MSERC who has a substantial interest in that a MSERC has been convicted of an offence punishable under a law by a term of imprisonment of one year or longer; or
- (c) that a MSERC is in breach of terms of its certificate granted under Section 38, the Minister may give written notice to the foreign enterprise stating the grounds for his opinion and that he intends to cancel its certificate on the expiry of 14 days from the date of the notice.

(2) Within 14 days of receipt of a notice under Subsection (1) the foreign enterprise may reply in writing to the Minister who shall consider the reply and either -

- (a) give written notice to the foreign enterprise that he withdraws his intention to cancel its certificate; or
- (b) give written notice, in the prescribed form, that its certificate is cancelled.

(3) The cancellation of a certificate under this section takes effect on and from the date of the notice referred to in Subsection (2)(b).

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(4) The Regulations shall prescribe the manner in which the Authority may give permission to a MSERC to carry on business temporarily for the purpose of winding-up notwithstanding that its certificate has been cancelled under Subsection (2) or (3).

PART VIII. - MISCELLANEOUS.

40. ADMINISTRATIVE ORDERS.

(1) The Authority may make Administrative Orders as to any matter required or permitted by this Act to be made, or that are necessary or desirable to be made, for carrying out or giving effect to this Act for the good governance of the Authority, the conduct and discipline of the employees of the Authority and the better management and control of the finances and assets of the Authority.

- (2) In addition to Subsection (1), the Authority may make administrative orders for the following:
- (a) the use and custody of the seal of the Authority; and
 - (b) the organisation and establishment of the staff of the Authority; and
 - (c) the persons who are to be regarded, for the purposes of this Act, as employees of the Authority; and
 - (d) the terms and conditions of employment of employees and categories of employees of the Authority; and
 - (e) criteria and procedures for the regular appraisal by the Authority of the performance of the Managing Director; and
 - (f) criteria and procedures for the regular appraisal by the Managing Director of the performance of employees of the Authority; and
 - (g) criteria and procedures for the disciplining of staff of the Authority; and
 - (h) codes of ethics and conduct for staff of the Authority, including codes relating to the specialised function of any employee or category or group of employees of the Authority; and
 - (i) the management, protection and control of property, including intellectual property, of the Authority; and
 - (j) tender and procurement procedures of the Authority; and
 - (k) procedures and other matters connected with the imposition and collection of rents or other charges levied by the Authority; and
 - (l) matters to be included in a report under Section 34; and
 - (m) procedures and other matters connected with the preparation and submission of the budget and the remission of funds to the Consolidated Revenue Fund referred to in Section 31(3); and
 - (n) other matters of management and administration of the Authority that are authorised by this Act, or that are necessary or convenient for giving effect to this Act.

(3) It is sufficient proof of the making of an administrative order by the Authority if the administrative order is signed by the Chairman, the Managing Director and one other member of the Authority.

41. PROTECTION FROM PERSONAL LIABILITY.

Subject to Section 35(3), a member of the Authority or an employee of the Authority is not personally liable for anything done or omitted to be done in good faith in the course of the activities or operations of the Authority or for the purposes of the Authority.

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42. PROOF OF CERTAIN MATTERS.

(1) Except as otherwise provided under any other law, in any proceedings by or against the Authority, proof is not required, unless evidence is given to the contrary, of -

- (a) a resolution of the Authority; or
- (b) the appointment of a member of the Authority; or
- (c) the appointment of the Managing Director; or
- (d) the presence of a quorum at a meeting of the Authority at which a determination is made or an act is done.

(2) No action or proceeding taken under this Act or any other law in respect of which the Authority may exercise powers shall be questioned on the ground of -

- (a) the existence of any vacancy in the membership or defect in the appointment of any member of the Authority; or
- (b) any omission, defect or irregularity not affecting the merits of the case.

43. REQUIREMENT TO PROVIDE INFORMATION.

(1) The Managing Director or an employee of the Authority authorised by the Managing Director in writing may give written notice to -

- (a) a governmental authority or a person; or
- (b) the owner or occupier of any premises or site; or
- (c) the person having control of any aircraft, vessel or vehicle,

to provide to the Managing Director any document, report, book, plan, map or other record (including monitoring records) in the possession or custody or under the control of the person for inspection.

(2) The inspection under Subsection (2) shall relate to -

- (a) the exercise or performance of the powers or functions of the Authority or any other person or body under this Act or any other environmental conservation law; or
- (b) information required to be kept in accordance with this Act or any other environmental conservation law or the conditions of any approval, certificate, licence, permit or other authorisation issued under this Act or any other environmental conservation law; or
- (c) the achievement of the purposes of this Act or any other environmental conservation law.

(3) A notice under Subsection (2) shall state -

- (a) the person to whom it is issued; and
- (b) the information that is required; and
- (c) the time within which the information is to be provided; and
- (d) why the information is required.

(4) A notice under Subsection (2) may be given to any person who the Managing Director believes, on reasonable grounds, has knowledge of a matter or has possession or control of a document dealing with a matter for which the information is required.

(5) A person who fails to comply with a notice under Subsection (2) within the time stipulated under Subsection (4)(c), is guilty of an offence.

- Penalty:
- (a) In the case of a corporation - a fine not exceeding K100,000.00; or
 - (b) In the case other than a corporation - a fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

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Default penalty: A fine not exceeding K10,000.00 per day until the penalty is paid in full.

- (6) Where the document or other item required to be provided for inspection under Subsection (2) contains -
- (a) information which relates to matters of a secret or confidential nature, the disclosure of which would be injurious to the public interest; or
 - (b) information which relates to a manufacturing or industrial process or trade secret used in carrying on or operating any particular undertaking or equipment or information of a business or financial nature which is confidential to the person from whom the information is required under this section, unless the person providing the information authorises its disclosure; or
 - (c) such information as the Managing Director may designate as confidential or as may be prescribed, the person required to provide the information may inform the Managing Director in writing and the Managing Director may, to the extent he considers appropriate or is required to do so by law, treat that information as confidential.

44. DUTY OF CONFIDENTIALITY.

(1) This section does not apply to general summaries of aggregated information which the Managing Director determines are exempted from confidentiality requirements.

- (2) Except as -
- (a) authorised in the course of official duty; or
 - (b) required or permitted by any law or court of competent jurisdiction; or
 - (c) as provided in Subsection (5), no member of the Authority, member of Authority staff or other person who in the course of any duty in or in connection with the Authority shall divulge, directly or indirectly, any confidential information received by or concerning the business of the Authority or any matters of which he has knowledge in the course of his duties.

(3) A person who discloses information in contravention of this section, is guilty of an offence.

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

(4) Notwithstanding Subsection (3), where an administrative order has provided for disciplinary measures to be taken against members of the Authority or employees of the Authority in relation to the unauthorised disclosure of confidential information, a member of the Authority or employee of the Authority who discloses information in contravention of this section may, in the discretion of the person authorised in the administrative order to take the disciplinary measure in respect of that person, be dealt with in accordance with that administrative order.

(5) Subsection (2) does not apply to a person who believes on reasonable grounds that the information disclosed may provide evidence of -

- (a) the commission of; or
 - (b) the attempted commission of; or
 - (c) a conspiracy to commit,
- an offence in relation to funds or other property of the Authority by any person, and the disclosure is made to -
- (d) the Managing Director; or
 - (e) a member of the Authority; or

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- (f) the Auditor-General; or
- (g) the Ombudsman Commission,

or by order of a Court.

45. RECOVERY OF FEES, CHARGES, ETC.

Except as otherwise provided under any other environmental conservation law, all -

- (a) rents, fees, charges and expenses; and
- (b) forfeitures incurred or imposed; and
- (c) liabilities to forfeiture of any article seized; and
- (d) other sums of money payable,

under this Act or any other environmental conservation law may be sued for, determined, enforced and recovered by civil proceedings in a court of competent jurisdiction in the name of the Authority, and the fact that a bond or other security has been paid shall not be pleaded or made use of in answer to or in stay of any of those proceedings.

46. SERVICE OF PROCESS.

A notice, summons, order, writ or other process to be served on the Authority may be served by being delivered to the office of the Authority or being sent by registered post and received in the Authority.

47. INSTITUTION OF PROCEEDINGS.

(1) The Managing Director or a person authorised by the Managing Director in writing may, after consultation with the Public Prosecutor, lay information and institute prosecutions for an offence against this Act or any other environmental conservation law.

(2) An offence under Subsection (1) shall be prosecuted -

- (a) where the offence provides for a maximum monetary penalty of K20,000.00 or less in the case of a person other than a corporation - in the District Court; or
- (b) where the offence provides for a maximum monetary penalty, in the case of a person other than a corporation, of K50,000.00 - before a Principal Magistrate; or
- (c) in any other case - in the National Court.

48. FALSE STATEMENTS.

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

Penalty: A fine not exceeding K50,000.00.

49. SERVICE OF DOCUMENTS.

(1) Any document or notice required to be served by the Authority on a MSERC may be effected by -

- (a) leaving it at the registered office of the MSERC; or
- (b) sending it by post to the registered office of the MSERC.

(2) Where a document or notice has been served in accordance with Subsection (1), the document or notice is deemed to have been properly served on the MSERC.

50. CONFLICT BETWEEN LAWS.

Where there is a conflict between the provisions of this Act and the provisions of any other law relating to carrying on business or investing in Manus, the provisions of this Act shall prevail.

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51. PROCEDURE WHERE NONE IS ESTABLISHED.

In the event where -

- (a) an act or step is required or permitted to be done or taken under this Act or under any other law; and
 - (b) no form is prescribed or no procedure is established either in this Act or the regulations,
- an application may be made by a person affected by the act or step to the Authority for directions as to the manner in which the act or step may be done or taken, and any act or step done or taken in accordance with the directions of the Authority shall be a valid performance of such act or step.

52. REGULATIONS.

(1) 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 in particular for -

- (a) the management and good governance of the Authority; and
- (b) service in actions under this Act, giving evidence in any proceedings under this Act, and any other procedural matters in relation to any proceedings under this Act; and
- (c) any fees, charges, taxes, resource rents or royalties payable in respect of any matter under this Act; and
- (d) the establishment and management of reserve funds for the purposes of the Authority under this Act or any other investment law; and
- (e) the establishment of committees and similar bodies in relation to the functions of the Authority, and the regulation of their membership, powers and related matters; and
- (f) receiving, securing, accessing and divulging confidential information; and
- (g) giving full effect to the transitional provisions of this Act; and
- (h) penalties of fines not exceeding K500,000.00 or imprisonment for a term not exceeding two years for offences against the regulations.

(2) A regulation made under Subsection (1) may be made generally or in respect of a particular area.

I hereby certify that the above is a fair print of the *Manus Special Economic Region Act 2022*, which has been made by the National Parliament.

Clerk of the National Parliament.

16 MAY 2022

I hereby certify that the *Manus Special Economic Region Act 2022*, was made by the National Parliament on 21 April 2022, by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.

16 MAY 2022