

(2) The operator of a licensed vessel that is in breach of a condition or act prohibited under these Regulations commits an offence and is liable on conviction to a fine not exceeding 200,000 penalty units, and in addition to such fine the licence of such vessel shall be revoked pursuant to the Act.

12. The Fisheries (PNA Third Implementating Arrangement) Regulations 2010 (LN 22 of 2010) are revoked. LN 22 of 2010  
revoked

MADE AT HONIARA this twenty-fifth day of April, 2011.

HON. JOHN MOFFAT FUGUI  
Minister for Fisheries and Marine Resources

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[Legal Notice No. 45]

**CHOISEUL PROVINCE ENTERPRISES  
ORDINANCE 2011**

ENACTED BY THE CHOISEUL PROVINCIAL ASSEMBLY

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**THE CHOISEUL PROVINCE PROVINCIAL  
ENTERPRISES ORDINANCE 2011**

**AN ORDINANCE** TO PROVIDE A FRAMEWORK FOR ENTERPRISES  
AND INVESTMENTS OWNED BY CHOISEUL PROVINCE

**ENACTED** by the Choiseul Provincial Assembly with the assent of the  
Minister --

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CHOISEUL PROVINCE PROVINCIAL ENTERPRISES  
ORDINANCE 2011

Short title            1.        This Ordinance may be cited as the Choiseul Province Provincial Enterprises Ordinance 2011 and shall come into effect on the date it is published in the *Gazette*.

Interpretation        2.        In this Ordinance, except where the context otherwise requires:

“the Assembly” means the Choiseul Provincial Assembly;

“the Authority” means the Choiseul Province Investment Authority established under the Choiseul Province Investment Authority Ordinance 1995;

“Controlling Ministers” in relation to a Provincial Enterprise or Provincial Investment means the Minister of Finance and the Responsible Minister, or any person acting in their place under this Ordinance;

“Dividend” includes a payment similar to a dividend;

“the Executive” means the Choiseul Provincial Executive;

“the Financial Management Ordinance” means the Choiseul Provincial Government Financial Management Ordinance 2008 or any subsequent equivalent legislation.

“Financial Year” means the period from 1 April to 31 March in any given year;

“Management” means the persons in day to day control of a Provincial Enterprise, or other venture in which the Province has invested, and includes the Board of Directors, and General Manager, and anyone in equivalent positions;

“the Province” means Choiseul Province;

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“Provincial Enterprise” means any business venture, whether a company or not which is:

- (a) owned either completely or in part by the Province;
- or
- (b) held for the Province in whole or in part by Controlling Ministers or any other persons; and in which the Province has a controlling interest;

“Provincial Investment” means an investment in the equity of a business venture whether a company or not which is:

- (a) owned either completely or in part by the Province; or
- (b) held for the Province in whole or in part by Controlling Ministers or any other persons; and in which the Province does not have a controlling interest;

“Responsible Minister” means the Minister appointed for a Provincial Enterprise under section 6 of this Ordinance;

“Statement of Provincial Objectives” means a statement under section 8 of this Ordinance;

- 3.** (1) The objectives of all Provincial Enterprises and Provincial Investment shall include:
- (a) To make a profit;
  - (b) To assist in the economic growth of the Province;
  - (c) To provide services to the people of the Province;
  - (d) To assist the social development of the Province;
  - (e) To provide employment and training in the Province, and act as a good employer
  - (f) To carry out its business in an environmentally friendly manner.

Objectives of  
Provincial  
Enterprises  
and Provincial  
Investments

(2) The failure of a Provincial Enterprise or Provincial Investment to comply with subsection (1) does not invalidate any transaction of that Provincial Enterprise or Provincial Investment.

Investigation  
prior to  
purchasing  
enterprise or  
investment

4. (1) Before acquiring a Provincial Enterprise or Provincial Investment the Province shall conduct a thorough investigation, the scale of which shall be proportionate to the value of the Province's investment.

(2) Such investigation shall:

- (a) Focus on the matters listed in section 3 of this Ordinance;
- (b) Consider the ability of private businesses to meet the same needs; and
- (c) If the value of the investment exceeds \$500,000, involve extensive public consultation.

Advisory  
committees

5. (1) The Executive may from time to time establish committees of persons with knowledge in business or other relevant matters to advise it on any decisions relating to Provincial Enterprises, Provincial Investments, or other matters under this Ordinance.

(2) Committee under subsection (1) may be established permanently, or for a limited time.

(3) The Executive may establish rules for committees established under subsection (1).

Responsible  
Ministers

6. (1) The Premier shall appoint a Responsible Minister for each Provincial Enterprise and each Provincial Investment.

(2) In selecting the responsible Minister the Premier shall consider which portfolio is most closely related to the Provincial Enterprise or Provincial Investment, provided that the Minister of Finance shall not be a Responsible Minister if he is already a Controlling Minister.

(3) If at any time the Finance Minister and the Responsible Minister are the same person that person shall cease to be the Responsible Minister, and the Premier shall appoint a new Responsible Minister.

(4) The Premier may at any time change the Responsible Minister of a Provincial Enterprise or Provincial Investment.

#### PART II PROVINCIAL ENTERPRISES

7. (1) The Executive may establish or purchase a Provincial Enterprise where it is assessed to be of benefit to the Province or the people of the Province. Establishment of Provincial Enterprises

(2) The Executive may sell or otherwise dispose of a Provincial Enterprise or part of a Provincial Enterprise where such sale or disposition is assessed to be of benefit to the Province.

(3) Where the net value of assets purchased, sold or disposed of under subsection (1) or (2) exceeds \$1,000,000, the Executive shall require the consent of the Assembly.

8. (1) Where the Executive considers that a Provincial Enterprise should pursue a specific objective or objectives other than those listed in section 3 they may set out a Statement of Provincial Objectives for that Provincial Enterprise, and such Statement of Provincial Objectives shall be binding on the Provincial Enterprise and the management of the Provincial Enterprise shall take such steps as are required to achieve those objectives. Statements of Provincial Objectives

(2) Before issuing a Statement of Provincial Objectives the Executive shall consider all likely impacts of the Statement of Provincial Objectives including both social and economic impact.

(3) The failure to comply with a Statement of Provincial Objectives does not invalidate any transactions of the Provincial Enterprise.

(4) Where any person has an equity interest in a Provincial Enterprise and believes that they have been prejudiced by a Statement of Provincial Objectives they may seek compensation from the Province, and if the Executive considers that they have suffered prejudice, the Province may compensate that person accordingly.

Annual  
reporting

**9.** (1) Within 3 months of the end of each financial year, each Provincial Enterprise shall provide the Province with:

- (a) Full sets of financial accounts for the year complying with generally accepted accounting practice.
- (b) Any audit reports on the financial accounts of the Provincial Enterprise which have not already been laid before the Assembly.
- (c) A statement setting out how the Provincial Enterprise has complied with section 3 of this Ordinance.
- (d) A statement setting out any assistance provided to the Provincial Enterprise by the Province during the year, whether financial or otherwise.
- (e) If the Provincial Enterprise is subject to a Statement of Provincial Objectives, a statement on how they have complied with that Statement of Provincial Objectives.

(2) All reports under this section shall be laid before the Assembly at its next sitting following the receipt of the report, and shall be made available to the public at large.

Provincial  
Annual  
General  
Meetings

**10.** (1) Each Provincial Enterprise shall be required to hold a meeting within Choiseul Province on at least one occasion in each financial year.

(2) The managing director, the general manager or any person who holds an equivalent position in each Provincial Enterprise shall be required to attend all such meetings.

(3) All residents of the Province shall be entitled to attend all such meetings and shall be entitled to ask questions.

(4) The Premier may exclude any persons from such meetings on the grounds of unacceptable behaviour.

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**11.** If at any time the Controlling Ministers or the Executive request information about a Provincial Enterprise, the Management of the Provincial Enterprise shall Provide such information as soon as reasonably possible. Requests for information

**12.** (1) Any confidential business information, or any personal information about any individual that would otherwise be included in a report or response under sections 9 and 11 may be declared restricted information by the Controlling Ministers. Exclusions from reports

(2) Before declaring information restricted information the Controlling Ministers shall weigh the public interest in receiving the information against the need to keep the information confidential.

(3) Any restricted information may be excluded from any information made available to the public.

**13.** Any person who provides false information for the purposes of reporting under sections 9 or 11, knowing such information to be false, commits an offence, and shall be liable on conviction to a fine not exceeding \$100,000, half of such fine to be payable to the Province. Providing false information

**14.** (1) Where a Provincial Enterprise is a company, one half of the shares controlled by the Province shall be held in the name of the Minister of Finance, and one half shall be held by the Responsible Minister. Where the Province controls an uneven number of shares, one share shall be held jointly by the Controlling Ministers. Ownership of Provincial Enterprises

(2) Controlling Ministers may not transfer shares held by them under this Ordinance to any other person, nor may they issue any new shares in a Provincial Enterprise without the authority of the Executive, and any such purported transfer or issue without the authority of the Executive shall be void and of not effect.

(3) Where a Provincial Enterprise is not a company, its assets, liabilities, rights and obligations shall where possible be held in the name of the Province. Where this is not possible they shall be held by the Minister of Finance and a Responsible Minister in equal shares.

Controlling  
Ministers'  
responsibilities

**15.** (1) The Controlling Ministers shall have authority over the Management of Provincial Enterprises on behalf of the Province, subject to any directions from the Executive or Assembly.

(2) The Controlling Ministers shall be responsible to the Assembly for ensuring that Provincial Enterprises comply with this Ordinance.

(3) Where possible Controlling Ministers shall arrange for the provisions of this Ordinance to be incorporated in the governing rules of the Provincial Enterprise.

Management  
of Provincial  
Enterprises

**16.** (1) The Controlling Ministers shall appoint appropriate persons, with appropriate technical and financial skills, to manage each Provincial Enterprise.

(2) Where a Provincial Enterprise is a company subsection (1) may be satisfied by appointing an appropriate board of directors.

(3) The Controlling Ministers will follow a fair and public process in the appointments under subsection (1).

(4) The Controlling Ministers shall only be involved in the day to day management of a Provincial Enterprise where there are special circumstances.

(5) The Province shall be represented on any Board of Directors of any Provincial Enterprise.

Transfer of  
rights to  
Provincial  
Enterprises

**17.** (1) The Executive may:

(a) Transfer to a Provincial Enterprise any assets of the Province (being assets relating to the activities to be carried on by the Provincial Enterprise), and any liabilities associated with those assets;

(b) Authorise a Provincial Enterprise to act on behalf of the Province in providing goods or services, or in managing assets or liabilities of the Province;

- (c) Vest in a Provincial Enterprise any rights conferred on the Province and any liabilities associated with those rights;
- (d) Grant to a Provincial Enterprise leases, licences, easements, permits, or rights of any kind in respect of any assets of the Province;
- (e) Guarantee any obligation of a Provincial Enterprise on behalf of the Province;

for such consideration, and on such terms and conditions, as may be agreed with the Provincial Enterprise, provided that where the Provincial Enterprise is not wholly owned by or on behalf of the Province, the Province shall ensure that fair value is obtained for any benefit granted.

- (2) Where the net value of any assets provided or obligation incurred into by the Province under subsection (1) exceeds \$1,000,000, the Executive shall require the consent of the Assembly.

**18.** (1) No Provincial Enterprise may sell any of its main undertakings without the consent of the Executive by resolution.

Restriction  
on sale of  
main under-  
taking

- (2) Where the net value of the main undertaking exceeds \$1,000,000, the Provincial Enterprise shall require the consent of the Assembly.

**19.** (1) Where a Provincial Enterprise makes a net profit in any financial year a minimum 10% of the net profit after tax shall be paid as a Dividend to the Province.

Dividends

- (2) The Executive may by resolution permit a Provincial Enterprise to pay a lesser Dividend, or not Dividend.

- (3) Where payment of a Dividend would endanger the ability of a Provincial Enterprise to continue to provide its current level of service no dividend shall be payable.

Province  
acquiring  
goods and  
services from  
Provincial  
Enterprises

20. Where the Province wishes to acquire goods or services from a Provincial Enterprise it shall acquire those goods or services on similar terms to those under which an unrelated third party could acquire those goods or services.

Audit of  
Provincial  
Enterprises

21. (1) The Auditor General shall be appointed auditor for all Provincial Enterprises.

(2) All Provincial Enterprises shall be audited at least once in each Financial Year.

(3) The Executive may appoint an additional auditor for a Provincial Enterprise if it considers this beneficial.

### PART III PROVINCIAL INVESTMENTS

Making  
Provincial  
Investment

22. (1) The Executive may make any Provincial Investment where it is assessed to be of benefit to the Province or the people of the Province.

(2) The Executive may sell or otherwise dispose of a Provincial Investment or part of a Provincial Investment where such sale or disposition is assessed to be of benefit to the Province.

(3) Where the net value of assets purchased, sold or disposed of under subsection (1) or (2) exceeds \$1,000,000, the Executive shall require the consent of the Assembly.

Executive to  
investigate  
Management  
of possible  
Provincial  
Investments

23. Before making any Provincial Investment:

(a) The Executive must satisfy itself that the management of the enterprise invested in is competent; and

(b) The Executive must take steps to ensure that the enterprise will provide sufficient regular reports to the Province.

**24.** (1) The Minister of Finance shall at or before the first sitting of the Provincial Assembly held more than six months after the end of a financial year lay before the Provincial Assembly a report setting out for each Provincial Investment:

Report to be  
laid before  
the Assembly

- (a) The Province's initial investment in that venture;
  - (b) Any further funds invested by the Province in the venture and the date of that investment;
  - (c) The present value of the Province's investment in that venture;
  - (d) Any revenue received by the Province from that investment in that financial year;
  - (e) A statement of any benefits provided to that venture by the Province during that financial year; and
  - (f) A statement of any other benefits to the Province from that investment.
- (2) The report shall attach copies of any accounts available for that investment.
- (3) Reports under this section shall be made available to the public at large.

**25.** Any person who provides false information for use in a report under section 24, knowing such information to be false, commits an offence and is liable on conviction to a fine not exceeding \$100,000, half of such fine to be payable to the Province.

Providing  
false infor-  
mation

**26.** All Provincial Investments shall where possible be held in the name of the Province. Where it is not possible for the Provincial Investment to be held in the name of the Province they shall be held by the Minister of Finance and the Responsible Minister in equal shares.

Provincial  
Investments  
held in the  
name of the  
Province

Responsi-  
bilities of  
Controlling  
Ministers

27. Where the Province has the ability to be involved in the Management of a Provincial Investment the Controlling Ministers shall be responsible to exercise that ability in the best interests of the Province and subject to any directions from the Executive or the Assembly.

Province  
providing  
benefits to  
Provincial  
Investments

28. (1) Where the Province provides any benefit to a Provincial Investment the Executive shall take steps to ensure that the Province receives fair value for that benefit.

(2) Where the net value of any benefit provided under subsection (1) exceeds \$1,000,000, the Executive shall require the consent of the Assembly.

#### PART IV MISCELLANEOUS PROVISIONS

Conflict of  
Interest

29. (1) Where any person is making any decision under this ordinance, and that person has a conflict of interest, a potential conflict of interest, or when a reasonable person would consider that the person making the decision would have a conflict of interest, that person shall exclude themselves from the decision making process.

(2) Where the person making excluding themselves under subsection (1) is a Controlling Minister, or in any other situation where someone needs to make that decision, the Premier shall appoint another person to replace the person excluding themselves for the purposes of that decision.

Shares held  
by Minister  
of Finance  
and  
Responsible  
Minister

30. (1) Shares in a Provincial Enterprise or Provincial Investment held in the name of a person described as the Minister of Finance, or a Responsible Minister shall be held by the person for the time being holding the office of Minister of Finance or the office of that Responsible Minister, as the case may be.

(2) Notwithstanding any other enactment or rule of law, it shall not be necessary to complete or register a transfer of shares of the kind referred to in subsection (1) of this section consequent upon a change in the person holding the office of Minister of Finance or the office of that Responsible Minister, as the case may be.

(3) A Controlling Minister may at any time or times by written notice to the secretary of a Provincial Enterprise or Investment, authorise (on such terms and conditions as are specified in the notice) such person as the Minister thinks fit to act as the Minister's representative at any or all of the meetings of shareholders of the Provincial Enterprise or Provincial Investment or of any class of such shareholders, and any person so authorised shall be entitled to exercise the same powers on behalf of the Minister as the Minister could exercise if present in person at the meeting or meetings. Where practicable a member of the Executive shall be appointed as representative under this sub-section, provided that the representative shall not be the other Controlling Minister or a person acting as their representative.

**31.** Any action to be done by the Controlling Ministers under this Ordinance is required to be done by the Controlling Ministers jointly unless the context requires otherwise.

Action by Controlling Ministers to be joint

**32.** (1) Shares or other assets or rights held by a Controlling Minister shall be held for the benefit of the Province, and any benefits from the shareholding or other assets or rights, including dividends, shall be paid to the Province.

Shares and assets to be held for the benefit of the Province

(2) No Controlling Minister may receive any personal benefit from any Provincial Enterprise or Provincial Investment unless the benefit is obtained through a transaction on terms similar to those on which an unrelated third party could acquire the benefit, and the Controlling Minister is not involved in the decision making of the Provincial Enterprise or Provincial Investment in relation to the transaction.

**33.** (1) 50% of all Dividends paid to the Province by Provincial Enterprises and Provincial Investments shall be set aside in a special fund, such fund to be used exclusively for investment purposes.

Retention of dividends for reinvestment

(2) The Assembly may permit a lesser amount to be set aside by resolution.

Sale of  
Provincial  
Enterprises  
and  
Investments

**34.** Where any Provincial Enterprise or Provincial Investment is to be sold or disposed of, the Executive shall take all reasonable steps to ensure that the Province receives the maximum benefit from that sale or disposition.

Steps to  
ensure  
compliance  
with legisla-  
tion and  
regulations

**35.** The Executive and the Controlling Ministers shall take all practicable steps to ensure that all Provincial Enterprises and Provincial Investments comply with all relevant legislation and regulations.

Application  
of Financial  
Management  
Ordinance

**36.** (1) The Financial Management Ordinance shall not apply to Provincial Enterprises which are companies, however those companies shall follow sound financial management practices at all times.

(2) Where a Provincial Enterprise is not a company, but forms a distinct and separate business, the Executive may permit the business to manage its funds independently of the rules in the Financial Management Ordinance, provided that it follows sound financial management practices.

(3) Section 32 of the Financial Management Ordinance (Restriction on Investment in Commerce) shall not apply to funds received by the Province under section 32 of this Ordinance, or any funds allocated by the Provincial Assembly for investment purposes.

Provincial  
Enterprises  
and  
Provincial  
Investment  
do not  
represent  
the Province

**37.** A Provincial Enterprise or a Provincial Investment is not, and does not represent the Province. They may not render the Province liable for any debts, liabilities or obligations, except in accordance with this Ordinance or any other law.

Regulations

**38.** The Executive may make Regulations with respect to forms for documents under this Ordinance and for the conduct and content of meetings under this Ordinance, or other matters related to this Ordinance.

#### PART V TRANSITIONAL PROVISIONS

Disestab-  
lish-  
ment of  
Chesul  
Province  
Investment  
Authority

- 39.** (1) The Authority is hereby dissolved.
- (2) All assets owned by the Authority at the date this Ordinance comes into force are hereby vested in the Province.
- (3) All liabilities of the Authority at the date this Ordinance comes into force are hereby vested in the Province.



(4) All claims by or against the Authority at the date this Ordinance comes into force are hereby vested in the Province.

(5) All other rights of the Authority at the date this Ordinance comes into force are hereby vested in the Province.

(6) All persons holding any records belonging to the Authority shall deliver them to the Province as soon as practicable after the date that this Ordinance comes into force.

40. The shares in Lauru Shipping Limited are hereby transferred as follows: Shares in  
Lauru  
Shipping

(a) The 1,499,999 shares held by Choiseul Investment Authority are divided and 750,000 transferred to the Minister of Finance, and 749,999 are transferred to the Minister of Transport Works and Infrastructure Development as Responsible Minister.

(b) The 1 share held by the Chairman of the Authority is hereby transferred to the Minister of Transport Works and Infrastructure Development as Responsible Minister.

41. The Choiseul Province Investment Authority Ordinance 1995 is hereby repealed. Repeal

*Passed by the Choiseul Provincial Assembly this 24th day of March 2011.*

*The printed impression has been carefully compared by me with the Ordinance passed by Choiseul Provincial Assembly and found by me to be a true and correct copy of the said Ordinance.*

*With the Assent of the Minister this 30th day of March 2011.*

Christopher Makoni  
Clerk to the Choiseul Provincial Assembly

Walter Folotalu  
Minister for Provincial Government and Institutional Strengthening

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