

**ENVIRONMENT MANAGEMENT (EIA PROCESS)
REGULATIONS 2007**

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ENVIRONMENT MANAGEMENT ACT 2005
(No. 2 of 2005)

**Environment Management (EIA Process)
Regulations 2007**

IN exercise of the powers conferred on me by sections 28(1)(f), 28(3), 29(2), 30(2) and 61(1) of the Environment Management Act 2005, I make these Regulations –

PART 1 – PRELIMINARY

Citation and commencement

1. (1) These Regulations may be cited as the Environment Management (EIA Process) Regulations 2007.
- (2) These Regulations come into force on date on which the Act comes into force.

Definitions

2. In these Regulations –
 - “Act” means the Environment Management Act 2005;
 - “CEO” means the chief executive officer of the Ministry, as amended to “Permanent Secretary” under the Titles of Offices Order 2007 (Legal Notice No. 9 of 2007);
 - “compliance inspection” means the inspection of the site of an approved development activity or undertaking pursuant to regulation 34;
 - “contact person” means an individual who is designated by a proponent as the person for by the Department in relation to the EIA process;
 - “day”, in respect of a period of 10 days or less, means a working day;
 - “EIA” means an environmental impact assessment;
 - “EIA approval” of a proposal means approval of the proposal for purposes of Part 4 of the Act, but does not imply approval under any other law;
 - “EIA consultant”, in relation to a proposal, means a consultant employed by a proponent for the EIA aspects of a proposal and registered under regulation 39 as a principal consultant;
 - “EIA report” means a comprehensive study report of the potential environmental or resource management impact of a proposal;

“EIA study” means the study of the environmental impact of a proposal with a view to producing an EIA report;

“environmental bond” means a bond given by the proponent in accordance with regulation 32;

“environmental management plan” means a plan produced pursuant to regulation 26;

“GMO” means a genetically modified organism;

"genetically modified organism" means any living organism other than a human being that possesses a novel combination of genetic material obtained through the use of modern biotechnology, and includes -

- (a) genetically modified human cells and tissues maintained outside the human body;
- (b) animal cells and tissues maintained in laboratories for research and investigation;

“inspection notice” means a written notice of an intention to inspect a site for purposes of scoping or of compliance inspection;

“living organism" means any biological entity capable of transferring or replicating genetic material, including sterile organisms, viruses and viroids;

“LMO” means a living modified organism;

"living modified organism" means any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology;

“major development proposal ” means a Part 1 proposal;

“Ministry” means the Ministry responsible for the administration of the Act;

“Part 1 proposal” means a development proposal that falls under Part 1 of Schedule 2 to the Act;

“Part 2 proposal” means a development proposal that falls under Part 2 of Schedule 2 to the Act;

“Part 3 proposal” means a development proposal that falls under Part 3 of Schedule 2 to the Act;

“processing authority” for a proposal means the approving authority, or -

- (a) if the approving authority is the proponent – the EIA Administrator;

(b) if the proposal is a Part 1 proposal – the EIA Administrator;

“proposal” means a development proposal as defined in the Act;

“register” means the environmental register kept pursuant to section 17 of the Act and regulation 42;

“review committee” means a committee appointed by the processing authority for an EIA report under regulation 29;

“review consultant” means a person registered under regulation 39 as a an EIA review consultant;

“review meeting” means a public meeting held pursuant to regulation 30;

“review report” means the report on the review of an EIA report pursuant to regulation 31;

“scoping inspection” means the inspection of the site of a proposed development activity or undertaking pursuant to regulation 13;

“scoping inspection notice” means a notice issued under regulation 13;

“scoping meeting” means a public meeting held pursuant to regulation 18;

“screening”, in relation to a development proposal, means determining in accordance with section 27 of the Act –

- (a) whether the proposal is subject to the EIA process; and if so
- (b) whether it is a Part 1, Part 2 or Part 3 proposal;

“TORs” means the terms of reference for an EIA study;

“TOR meeting” means a public meeting held pursuant to regulation 20;

“written” and “in writing” include, subject to regulation 44, a record or communication in electronic form.

Authority for a development proposal

3. (1) Every proponent of a development proposal must apply to the approving authority for a decision on the proposal under Part 4 of the Act before undertaking any work in respect of it that will alter the nature of any land as defined in the Act.

(2) If a proponent does not know the identity of the approving authority, the proponent may in writing seek the advice of the EIA Administrator, providing for that purpose such documents and other information relating to the proposal as the EIA

Administrator may reasonably require.

(3) If the proponent of a proposal is the Ministry or other entity that would otherwise be the approving authority, the application for a decision under Part 4 of the Act must be made to the EIA Administrator and the provisions of these Regulations are to be read as if the proposal were a Part 1 proposal.

PART 2 – SCREENING

Application for screening of a proposal

4. (1) Every proponent of a development proposal must apply for screening of the proposal in accordance with these Regulations and section 27 of the Act.

(2) A proponent who wishes to apply for screening of a proposal must apply to the approving authority on Form 1 in Schedule 1 to these Regulations and pay the prescribed fee.

- (3) The application must include –
- (a) details of the contact person;
 - (b) evidence as to the ownership of the land that is the subject of the proposal;
 - (c) an indication of whether the owner consents to the development;
 - (d) in the case of native land, an indication of the view of the Native Lands Trust Board on the proposal;
 - (e) an assessment of any environmental or resource impacts that the proposal is likely to have;
 - (f) an indication of how such impacts will be managed or mitigated;
 - (g) a statement as to what public consultations have been held on the proposal, if any;
 - (h) an indication of public response to the proposal, as evidenced by such consultations or otherwise.
- (4) The application must be accompanied by -
- (a) the prescribed screening fee;
 - (b) a locality plan sufficient to identify the land or premises to which the proposal relates;
 - (c) any other information, plans or drawings needed to describe the

proposed development, as required by Form 1.

- (5) The proponent must send –
- (a) 5 hard copies of the application and accompanying documents, and one electronic copy on a disc in PDF format, to the approving authority;
 - (b) one hard copy to the EIA Administrator.

Ministry etc. as proponent

- 5.** (1) Where section 27(6) of the Act applies (a Ministry or other entity proposes a development activity or undertaking for which it would otherwise be the approving authority) –
- (a) the Ministry or other entity must apply as a proponent to the EIA Administrator in accordance with regulation 4;
 - (b) the EIA Administrator performs the role of the approving authority in making a determination under regulation 6 and a decision under regulation 7 and for other purposes of these Regulations.

(2) If the approving authority for a development proposal is a Ministry, department, statutory authority or local authority, screening must be undertaken by the environmental management unit for that entity established under section 15 of the Act.

Procedure on a screening application

6. (1) Upon receipt of an application in due form for screening of a proposal, the approving authority must determine whether the proposal is subject to the EIA process, that is to say, whether it is likely to cause significant environmental or resource management impact, taking into account the matters set out in section 27(2) of the Act.

(2) Before making a determination under subregulation (1), the approving authority may –

- (a) in writing request further information or documents, or both, about the proposal from the proponent;
- (b) inspect the site at a date and time agreed with the proponent;
- (c) take water and soil samples from the proposed development site to ascertain existing quality;
- (d) ask the proponent to make a presentation of the proposal at a meeting, on site or elsewhere;
- (e) consult orally or in writing, and obtain recommendations from, the EIA Administrator or any ministry, department, statutory authority, local authority or other person or body that has relevant knowledge

and expertise.

- (3) A determination under subregulation (1) must be in writing and must –
- (a) describe the proposal including its location;
 - (b) identify the environmental setting;
 - (c) identify the possible environmental impact;
 - (d) state the possible ways to mitigate any significant impacts identified;
 - (e) examine the proposal's compatibility with any zoning requirements or plans;
 - (f) determine whether the proposal will have –
 - (i) no significant impacts;
 - (ii) impacts that will be mitigated to the point of insignificance by the conditions normally attached to an approval;
 - (iii) potentially significant impacts that require a detailed EIA report.
- (4) If an approving authority obtains advice as provided by subregulation (2)(e) –
- (a) a copy of any written advice must be made available to the proponent on request;
 - (b) a written summary of any oral advice must be given to the proponent on request;
 - (c) the decision on the proposal must remain that of the approving authority.

(5) The approving authority may require the proponent to reimburse all reasonable costs incurred by the authority in screening a proposal, including transport and out-of-hours pay for inspectors and other staff of the authority. Any dispute as to the reasonable cost of screening is to be resolved by the CEO.

Screening decision

7. (1) If, pursuant to regulation 6, the approving authority determines that the proposal is not subject to the EIA process, the approving authority must within 4 days of the determination send to the EIA Administrator –
- (a) a copy of the determination; and

- (b) a sum equivalent to one-half of the screening fee paid by the proponent.

(2) On receipt of a determination under subregulation (1), the EIA Administrator must within 4 days -

- (a) confirm that the proposal can be approved without further assessment;
- (b) refer the proposal back to the approving authority for further screening; or
- (c) direct that the proposal be treated as a Part 1 or Part 2 proposal, as the EIA Administrator decides, and that it be subject to the EIA process.

(3) The approving authority must, within 4 days of receiving the response from the EIA Administrator –

- (a) inform the proponent in writing of its determination under regulation 6, as confirmed or varied by the EIA Administrator; and
- (b) send the proponent a copy of the determination and of any direction by the EIA Administrator.

(4) If the approving authority determines that the proposal can be approved without further assessment, and if that determination is confirmed by the EIA Administrator under subregulation (2)(a), the proponent may apply for approval of the development proposal to the approving authority in accordance with any written law relating to the activity or undertaking.

(5) If, pursuant to regulation 6, the approving authority determines that the proposal is subject to the EIA process, an EIA report on it must be produced and reviewed in accordance with sections 28 to 31 of the Act and these Regulations.

(6) A proponent who is dissatisfied with a determination under this regulation may appeal in writing to the CEO, whose decision is final.

Classification of proposals

8. (1) If, pursuant to regulation 6, the approving authority determines that the proposal is subject to the EIA process, the approving authority must within 5 days further decide whether the proposal falls under Part 1, 2 or 3 of Schedule 2 to the Act, unless the EIA Administrator has made a direction in that regard under regulation 7(2)(c).

(2) If, in order to make a decision under subregulation (1), the approving authority requires further information or advice, regulation 6(2) and (3) apply as if they were restated in this regulation, in which case the time limit stated in regulation 7 (1) runs from the obtaining of the further information or advice.

- (3) If the approving authority decides that the proposal is a Part 1 proposal, it must within 5 days send the application to the EIA Administrator together with –
- (a) all accompanying documents;
 - (b) any information or samples obtained as a result of action taken pursuant to paragraphs (a), (b), (c) and (d) of regulation 6(2);
 - (c) a copy of any written advice given pursuant to paragraph (e) of regulation 6(2);
 - (d) a copy of its determination under regulation 6 and written reasons for its decision under this regulation;
 - (e) any other written observations the approving authority wishes to make in relation to the proposal;
 - (f) a sum equivalent to one-half of the screening fee paid by the proponent.

- (4) If the approving authority decides that the proposal is a Part 2 proposal, it must –
- (a) send to the EIA Administrator a copy of its determination under regulation 6 and written reasons for its decision under this regulation;
 - (b) process the proposal in accordance with sections 28 to 31 of the Act and these Regulations.

(5) If the approving authority considers that the proposal is a Part 3 proposal, it must within 5 days send it to the EIA Administrator for a decision in accordance with section 27(4)(c) of the Act, and subregulation (1) applies as if it were a Part 1 proposal.

(6) The approving authority must in writing inform the proponent of a decision under subregulation (1), (2) or (3) within 4 days of making it.

(7) A proponent who is dissatisfied with a decision under this regulation may appeal in writing to the CEO, whose decision is final.

Role of the EIA Administrator

9. (1) If a Ministry or other entity proposes a development activity or undertaking for which it would otherwise be the approving authority, the role of the EIA Administrator is as described in regulation 5.

(2) If an approving authority, not being the EIA Administrator, determines

that a proposal is not subject to the EIA process, the role of the EIA Administrator is as described in regulation 7(1) and (2)

(3) If the approving authority, not being the EIA Administrator, decides that a proposal is a Part 3 proposal, the EIA Administrator must, on receipt of the documents and information referred to in regulation 8(3), determine whether an EIA report is required on the proposal and if so whether it is a Part 1 or Part 2 proposal.

- (4) If the proposal requires an EIA report –
- (a) if it is a Part 1 proposal, the EIA Administrator must process it, in accordance with these Regulations;
 - (b) if it is a Part 2 proposal, the EIA Administrator must refer it to the approving authority for processing, unless regulation 5 applies.

(5) Once the result of a screening under regulation is confirmed by the EIA Administrator, or if the screening is done by the EIA Administrator, the result must be entered in the register by the EIA Administrator.

(6) An approving authority must make a written report every 3 months to the EIA Administrator on all screening done by the authority, including a nil report.

(7) The EIA Administrator may undertake periodic audits and call for information from the approving authority to verify the information contained in reports provided under subregulation (5)..

PART 3 – EIA PROCESSING

Application for EIA processing of a proposal

10. (1) If, pursuant to regulation 7(3) or 8(6), a proponent is informed by the approving authority or the EIA Administrator that the proposal is a Part 1 or Part 2 proposal and subject to the EIA process, the proponent may in writing –

- (a) discontinue the application, in which case no further fee is payable;
- (b) vary the application, in which case the screening process starts afresh and a fresh screening fee is payable;
- (c) proceed with the application.

(2) If the proponent decides to proceed with the application –

- (a) an application to proceed with the EIA process must be made in Form 2 in Schedule 1 to these Regulations to the processing authority;
- (b) the EIA processing fee is payable;

- (3) An EIA processing application must include –
 - (a) particulars of any changes in the proposal from those in the screening application;
 - (b) proposed terms of reference (“TORs”) that the proponent considers would adequately set the parameters for an EIA study on the proposal.
- (4) The proponent must send –
 - (a) 5 hard copies of the application and accompanying documents, and one electronic copy on a disc in PDF format, to the processing authority;
 - (b) one hard copy to the EIA Administrator.

EIA processing of a proposal

11. (1) The processing authority must give a written receipt for an EIA processing application and the date of that receipt is the date of receipt of the proposal for purposes of the Act.

(2) Upon receipt of an EIA processing application on a proposal in due form, the processing authority must –

- (a) perform a scoping exercise in relation to the proposal;
- (b) finalise the TORs on the proposal;
- (c) require the proponent to have an EIA study performed and an EIA report written on the proposal;
- (c) arrange for review of the EIA report;
- (d) in the light of the EIA report, decide whether to grant EIA approval of the proposal, with or without conditions, as provided by section 31 of the Act.

(3) EIA approval of a proposal under these Regulations does not constitute approval of the proposal in terms of any other law, and the proponent must apply for approval under any other law relating to the proposal.

Scoping of a proposal

12. (1) The purpose of scoping of a proposal is to establish the scope of the EIA study on the proposal and to decide the terms of reference (“TORs”) for it.

- (2) Scoping may include -
 - (a) inspection of the site of the proposed development or activity in accordance with regulation 13.

- (b) keeping records of a site inspection, as provided by regulation 15;
- (c) taking of samples of soil or water or other materials in or on the site of the proposed development in accordance with regulation 16;
- (d) consultation, as provided in regulation 17;
- (e) public participation, as provided in regulation 18.

(3) If the processing authority for a development proposal is a Ministry, department, statutory authority or local authority, scoping must be undertaken by the environmental management unit established under section 15 of the Act.

Site inspection

- 13.** (1) The processing authority must inspect the site of a development proposal –
- (a) to identify the issues that require detailed EIA study; and
 - (b) to achieve familiarization with the site and its environs.

(2) The date and time for a site inspection will normally be as agreed between the processing authority and the proponent, but if a date and time cannot be agreed, or the site owner or occupier, if different, does not consent, subregulations (3) to (5) apply.

(3) The processing authority must give the proponent and the owner or occupier of the site, if different, a written notice (“site inspection notice”)–

- (a) the date and time of a proposed site inspection, which must be at least 7 days after the notice is served;.
- (b) whether the proponent, site owner or occupier or the EIA consultant need to be at the site at the time of the inspection;.
- (c) whether the processing authority intends to take samples of soil or water or any other material from the site.

(4) If the date or time stated in the site inspection notice are not acceptable –

- (a) the proponent, site owner or occupier must, at least 2 days before the proposed date, inform the processing authority and state a date or time that would be acceptable;

- (b) once the processing authority and the proponent, site owner and occupier have agreed a date and time for the inspection, the inspection notice is deemed to be varied accordingly.

(5) If the proponent, site owner or occupier fails –

- (a) to respond to a site inspection notice within 7 days or agree a date and time for the inspection;
- (b) to make the site available for inspection at the date and time agreed or stated in a site inspection notice; or
- (c) if attendance is required by the notice, to attend the site at the time of the inspection; or
- (d) to provide samples or permit the taking of samples as required by the processing authority in writing,

scoping will be discontinued and a fresh EIA processing application must be made for the EIA process to resume.

(6) Site inspections may only be conducted by persons appointed or designated under section 18 of the Act, but specialist personnel from other line ministries or the private sector may be included in a scoping inspection as advisers and for the taking of samples.

(7) The processing authority may require the proponent to reimburse all reasonable costs incurred by the authority in a site inspection, including transport and out-of-hours pay for inspectors and other staff of the authority or other specialist personnel. Any dispute as to the reasonable cost of a site inspection is to be resolved by the CEO.

(8) This regulation does not affect sections 19 and 20 of the Act relating to inspections and must be read consistently with those sections.

Factors to be taken into account in a site inspection

14. A site inspection must take into account factors affecting the relationship between the proposed development and the features of the site, including, but not limited to -

- (a) natural features such as topography, vegetation and watercourses;
- (b) physical features such as the position of buildings and infrastructure on and around the site, access and services availability;
- (c) adjacent uses, including –
 - (i) people oriented activities;
 - (ii) activities with high noise or traffic- generating potential;
 - (iii) other uses of the resources such as a river;
 - (iv) other core activities such as business, schools, residences, recreation;

- (v) the presence of activities using or storing hazardous substance or nuisance generating activities.

Records of site inspection

- 15.** (1) The processing authority for a proposal must in respect of a proposal keep -
- (a) written records containing all relevant details of the site;
 - (b) a plan of the site to show the appearance of the site at the time of the application, and how the site will look after development;
 - (c) records of any samples taken at the site and of the results of analysis of the samples.

(2) The processing authority may take photographs and film and make paintings or drawings, in order to identify and record any unusual site features such as vegetation, sacred areas or waterways that will help in discussing the potential effects of the proposal.

(3) If the processing authority intends to make a record under subregulation (2) it must first –

- (a) obtain the written consent of the proponent and of the site owner or occupier (if different);
- (b) if such consent is not given, give notice of intention to make the record in the site inspection notice given under regulation 13, in which case consent is deemed to have been given upon entry to the site.

(4) The proponent and the site owner or occupier of the site (if different) must allow access to the site and to all buildings and structures on the site for the purpose of taking or making photographs or drawings and taking samples. If the proponent or site owner or occupier fails to do so scoping will be discontinued and a fresh EIA processing application must be made for the EIA process to resume.

(5) When a site inspection report is complete –

- (a) section 19(2)(b) of the Act applies to it;
- (b) it must be entered in the register kept under section 17 of the Act, and a copy sent to the proponent.

Taking of samples

- 16.** (1) If samples of soil or water or any other material are to be taken from the site of a proposed development or activity pursuant to section 19(1)(b) of the Act –
- (a) written notice of the intention to take a sample, and the purpose,

must be given to the proponent and to the site owner or occupier, if different;

- (b) the consent of the owner or occupier of the site must be obtained;
- (c) the proponent or a representative of the proponent must be invited to observe the taking of the sample, and to take a separate sample if the proponent wishes;
- (d) the sample must be divided into 3 parts, with one part going to the proponent or the proponent's representative, one part being sent in a sealed container for analysis and one part being kept by the processing authority.

(2) The proponent must give a receipt for any sample given to the proponent, which must be kept with the site records kept under regulation 15.

(3) Analysis of samples must be performed by a laboratory or other person or institution with relevant qualifications and experience, as determined by the Director.

(4) A written report on a sample analysis must be -

- (a) sent to the processing authority and copied to the proponent;
- (c) produced as soon as reasonably practicable, having regard to the 30-day limit for the scoping exercise.

(5) If the sample analysis report is not available in time, it must be ignored for purposes of the scoping exercise but can be included in the EIA report.

(6) The processing authority may require the proponent to reimburse all reasonable costs incurred by the authority in taking and analyzing samples from the site. Any dispute as to the reasonable cost is to be resolved by the CEO.

(7) If the proponent or the owner or occupier fails to facilitate the taking of samples in accordance with this regulation, scoping will be discontinued and a fresh EIA processing application must be made for the EIA process to resume.

Scoping consultation

- 17.** (1) For the purpose of scoping a proposal, the processing authority may –
- (a) in writing request further information or documents, or both, about the proposal from the proponent;
 - (b) ask the proponent to make a presentation of the proposal at a meeting, on site or elsewhere;

- (c) consult orally or in writing, and obtain recommendations from, the EIA Administrator or any ministry, department, statutory authority, local authority or other person or body that has relevant knowledge and expertise.
- (1) –
- (2) If the processing authority obtains advice as provided by subregulation
 - (a) a copy of any written advice must be made available to the proponent on request;
 - (b) a written summary of any oral advice must be given to the proponent on request;
 - (c) the decision on scoping must remain that of the processing authority.

Public participation in scoping

18 (1) The processing authority may if it considers appropriate involve the public in the scoping exercise to gather information that is likely to benefit the planning of the development proposal. In particular, public participation should be sought in order to -

- (a) clarify the nature of impacts or provide a better estimate of the magnitude of impacts;
- (b) provide project planners with a better understanding of community aspirations and needs;
- (c) allay fears in the community or improve the social acceptability of the project.;
- (d) provide additional environmental information to project planners.

(2) Public participation in scoping involves discussions with the proponent, the approving authority (if not the processing authority), scientific institutions, local community leaders and others to include all the possible issues and concerns raised by these various groups.

(3) The processing authority may in writing require the proponent to convene one or more scoping meetings, at times and locations determined by the processing authority and convenient for those likely to wish to take part.

(4) Notice of a scoping meeting must be given by the proponent at least 7 days before the meeting –

- (a) on every radio or television station that broadcasts in the area of the site, in the indigenous and commonly used languages of the area;

- (b) in every newspaper that circulates in the area of the site, in the indigenous language of the area.

(5) The proponent's costs of convening a scoping meeting, including but not limited to the hire of a venue and publicity, are to be met by the proponent.

(6) The processing authority may require the proponent to reimburse reasonable costs incurred by the authority in convening a scoping meeting, including transport and out-of-hours pay for inspectors and other staff of the Ministry. Any dispute as to the reasonable cost of a scoping meeting is to be resolved by the CEO.

Preparation of terms of reference

19. (1) On completion of a scoping exercise in respect of a proposal, the processing authority must in accordance with section 28(3) of the Act prepare terms of reference for the EIA study on the proposal.

(2) In order to comply with section 28(2) of the Act, the TORs on the proposal must be finalized within 30 days from the receipt of the EIA processing application in due form.

- (3) The finalised TORs –
 - (a) may be based on or take into account the proposed TORs included in the EIA processing application; but
 - (b) may depart from them to the extent the processing authority considers appropriate.

(4) If the proposal is for a major development, the processing authority may invite participation of other line ministries, the private sector, non-governmental organizations, public authorities and other interested persons to assist in the preparation of the TORs.

(5) The processing authority may employ an independent EIA consultant to prepare the TORs on a proposal, at the authority's cost.

(6) With the written approval of the processing authority (which must not be unreasonably withheld), the proponent may employ an EIA consultant to prepare the TORs, in which case –

- (a) the draft TORs must be submitted to the processing authority to ensure that all the issues of importance to the decision-makers are addressed in the TORs;
- (b) the draft TORs must be submitted in sufficient time to enable them to be finalised within the 30-day limit mentioned in subregulation (2)

- (c) the draft TORs must be amended in accordance with any written directions of the processing authority;
- (d) the TORs are only finalised when approved in writing by the processing authority.

(7) If the TORs for an EIA study are prepared by the processing authority, the authority must send them to the proponent within 7 days of being finalised.

TOR meetings

20. (1) In the case of a major development proposal, if the TORs are prepared by the proponent's own EIA consultant, the proponent must convene at least one meeting at which draft TORs are presented for discussion and participants can propose additions to or deletions from them.

- (2) Whether or not –
 - (a) a meeting is convened under subregulation (1);
 - (b) the draft TORs are prepared by the proponent;
 - (c) the proposal is for a major development,

the processing authority may if it considers it necessary require the proponent to convene one or more meetings to discuss the draft TORs on the proposal.

(3) Regulation 18(3) to (6) apply to TOR meetings as they apply to scoping meetings.

Contents of TORs

21. (1) There is no prescribed form for TORs for an EIA study on a proposal but they must –

- (a) set the parameters for the EIA study on the proposal;
- (b) indicate the environmental and resource issues that the EIA report on the proposal should deal with.
- (c) consider whether an environment management plan should be a condition of approval of the proposal;
- (d) consider whether an environmental bond should be taken from the proponent, and if so the nature and amount of the bond.

(2) If the processing authority or the EIA consultant considers that an environmental management plan should be a requirement for EIA approval of a proposal, this must be stated in the TORs in relation to the proposal.

PART 4 – EIA STUDY AND REPORT

Purpose of the EIA study

- 22.** (1) The purpose of an EIA study on a proposal is –
- (a) to identify and assess the potential environmental and resource management impacts of the proposal;
 - (b) to recommend appropriate methods to eliminate or mitigate those impacts;
 - (c) to enable the proponent to modify the proposal by mitigating potentially significant impacts before an EIA report is produced;
 - (d) to facilitate the production of an EIA report on the proposal.
- (2) An EIA study –
- (a) must consider all phases of project planning, implementation and operation, including decommissioning;
 - (b) should include consideration of alternatives to the proposed actions.
 - (c) should consider whether an environment management plan should be a condition of approval of the proposal;
 - (d) should consider whether an environmental bond should be taken from the proponent, and if so the nature and amount of the bond.
- (3) The study is the responsibility of the proponent, but an EIA consultant must be employed for technical aspects of the study.

Conduct of the EIA study

- 23.** (1) Persons carrying out an EIA study on a proposal are expected to conduct fieldwork to obtain accurate measurements of environmental values for use in making impact predictions and recommending appropriate environmental protection measures in respect of the proposal.
- (2) A person carrying out an EIA study on a proposal must –
- (a) inspect the site of the proposed development activity or undertaking, taking into account the factors set out in regulation 14 in relation to site inspections;
 - (b) keep records of a site inspection similar to those kept by the processing authority under regulation 15 and make them available to the processing authority on request, subject to regulation 43.

- (3) If the EIA study involves taking of samples, the proponent must observe the requirements of regulation 16 so far as applicable and –
- (a) invite the processing authority to observe the taking of samples and to receive one part of the sample;
 - (b) retain the report on the analysis of the sample and provide a copy to the processing authority on request, subject to regulation 43.
- (4) Pursuant to and in accordance with section 34 of the Act –
- (a) the proponent must conduct one or more public consultations during the EIA study on a proposal;
 - (b) a Ministry that is a proponent must establish a committee to undertake consultations on the proposal.
- (5) Regulation 18(4) and (5) apply to a meeting convened for the purpose of subregulation (4)(a).

Preparation of the EIA Report

- 24.** (1) The EIA report on a proposal is based on the EIA study. It should –
- (a) be a comprehensive study report of the potential environmental or resource management impact of the proposal.
 - (b) determine the conditions for EIA approval of the proposal;
 - (c) identify the potential impact of the proposal on the surrounding environment and suggest possible mitigation measures;
- (2) If in light of an EIA study it appears that any aspects of a proposal, either individually or cumulatively, may cause a significant impact on the environment, these must be dealt with in the EIA report.
- (3) The EIA report on a proposal must –
- (a) be prepared by an EIA consultant as required by section 28(4) of the Act;
 - (b) contain the information required by the TOR and by regulation 25.
- (4) The Director may issue Guidelines for the format of an EIA report, but the report may be in any format that gives the information required by the Act and these Regulations.

Contents of the EIA report

- 25.** (1) An EIA report on a proposal must, to the extent appropriate, include –
- (a) the name and location of the proposal and details of the proponent,

the approving authority, the date of preparation of the proposal and the person or body responsible for the preparation;

- (b) the identity of the person or persons who prepared or participated in the TORs, with full contact details;
- (c) a description of the purpose and scope of the proposed development activity or undertaking, including the background and rationale for the activity or undertaking and its intended goals and objectives;
- (d) a description of the environmental setting of the site of the proposal, including a statement of environmental resources and conditions in the area before the implementation of the activity or undertaking, and a projection or estimation of changed environmental circumstances that may occur as a result of the activity or undertaking;
- (e) a description of the possible environmental and resource management impacts of the activity or undertaking, including any pollution or waste that may be generated, and impacts occurring during construction, operation, decommissioning, and abandonment phases of the activity or undertaking;
- (f) a statement of the various alternatives that have been considered for the activity or undertaking that are reasonably foreseeable and technically and economically appropriate, including the option of taking no action, and an outline of the reasons for choosing the proposed action;
- (g) a statement of the mitigation action proposed in respect of any adverse impacts identified under paragraph (e);
- (h) details of individuals, organisations, government offices, ministries, non-governmental organisations, villagers, local councils, and others who have an interest, expertise, or jurisdiction regarding the proposal and who have been consulted;
- (i) a summary of the results of public consultations held on the proposal;
- (j) recommendations on the selected alternatives, mitigation measures, monitoring, other studies, analysis, and any additional consultation that may be required; and
- (k) an environment management plan if one is required by the TORs;

- (l) a recommendation as to whether an environmental bond should be taken from the proponent, and the nature and amount of such bond;
- (m) any other matter specified in the TORs.

(2) An EIA report on a proposal must make particular mention of any hazardous substances and pollutants that might be discharged by the proposed development and of any GMOs and LMOs involved in the construction or operation of the activity or undertaking.

- (3) An EIA report must -
 - (a) be signed and dated by or on behalf of the proponent;
 - (b) have attached to it all reports, plans, analyses and other documents that are needed or appropriate to assist readers of the report to understand it.

Environmental management plan

26. (1) If an environmental management plan for a proposal is required as part of an EIA report by the TOR, it must -

- (a) describe in respect of the proposal the environmental protection measures that will be put in place by the proponent if approval is given for the proposal;
- (b) include an environmental monitoring and surveillance program of action;
- (c) provide for an environmental monitoring committee to be appointed by the proponent to verify that the environmental protection plan is being fulfilled and adverse impacts of the proposal documented.

(2) An environmental management plan is in addition to the statement of mitigating action required by paragraph (g) of regulation 25(2).

Submission of EIA report

27. (1) When an EIA report on a development proposal is completed, the proponent must send -

- (a) 4 hard copies of the report and accompanying documents, and one electronic copy on a disc in PDF format, to the processing authority;
- (b) one hard copy to the EIA Administrator.

(2) The processing authority must within 4 days give a written receipt for the

report and the date of that receipt is the date of submission for purposes of the Act.

(3) If so requested in writing by the processing authority, the proponent must supply further hard copies of the report for distribution to members of a review committee.

(4) An EIA report that is not submitted to the processing authority within 12 months of the TOR being finalized will be invalid and a new application for EIA processing of the proposal will need to be made, unless the proponent has obtained a written extension of time from the processing authority.

Publication of EIA report

- 28.** (1) Once an EIA report has been submitted under regulation 27 –
- (a) the processing authority must send a copy of the report to the Director;
 - (b) the Director must enter the report in the register; and
 - (c) the processing authority must make the complete report available at appropriate locations for inspection by the public and for purchase at cost.
- (2) The processing authority may, and in respect of a major development proposal must, give notice of the publication of a report –
- (a) on every radio or television station that broadcasts in the area of the site of the proposed development; and
 - (b) in every newspaper that circulates in the area of the site.
- (3) If notice is given under subregulation (2) it must set out –
- (a) the locality and the nature of the development;
 - (b) where copies of the EIA report can be obtained;
 - (c) how the community can participate in identifying the issues of concern by commenting on the report; and
 - (d) the time limit for the submission of comments in writing, being 28 days from the submission of the report.
- (4) Publication under subregulation (1)(c) and (2) must be within 4 days of the submission of the report, in order to allow the public time to inspect and review it within the 21 days provided by section 30(3) of the Act.
- (5) For major development proposals the processing authority may invite comments on an EIA report by other line ministries, the private sector, non-governmental

organizations, public authorities and other interested persons.

Procedure for review of an EIA report

29. (1) Once an EIA report on a proposal has been published, the processing authority must arrange for a review of the report to be conducted, as required by section 30 of the Act.

(2) The review must be conducted by a registered review consultant (not being the EIA consultant for the proposal) or by a review committee as the Director directs.

(3) In making a decision under subregulation (2), the Director must take into account –

- (a) the technical capacity of the processing authority; and
- (b) the nature and size of the proposed development.

(4) A review committee –

- (a) is appointed by the Director as a committee of the processing authority;
- (b) consists of not more than 10 people drawn from the relevant industry, NGO's, Government, local communities and academic institutions;
- (c) appoints its own Chairman and governs its own proceedings in accordance with normal rules of committee practice;
- (d) meets as, when and where convenient;
- (e) must complete the review and make its recommendations within 35 days of the submission of the EIA report.

(6) The processing authority may require the proponent to reimburse reasonable costs incurred by the authority in reviewing an EIA report, including the employment of a consultant, the convening of a review committee and transport and out-of-hours pay for inspectors and other staff of the Ministry. Any dispute as to the reasonable cost of the review is to be resolved by the CEO.

(7) This regulation does not affect section 30(5) of the Act (which enables the processing authority to seek comments, documents and information and to appoint technical committees).

Review meetings

30. (1) The processing authority must require the proponent to conduct public consultations on the review of an EIA report by way of one or more review meetings, at

times and places determined by the processing authority and convenient for those likely to wish to take part.

(2) At least one of the review meetings must be held in the vicinity of the area of the proposed development, in compliance with section 34(1) of the Act.

(3) If a review meeting is held, notice of it must be given by the proponent in the manner set out in regulation 18(4) in relation to scoping meetings and must inform the public of –

- (a) the locality and the nature of the development;
- (b) where copies of the EIA report can be obtained;
- (c) the location and time of the review meeting; and
- (d) the time limit for the submission of comments in writing, being 28 days from the submission of the report.

(4) The proponent's costs of convening a review meeting, including but not limited to the hire of a venue and publicity, are to be met by the proponent.

(5) Every review meeting must be held within 21 days of the submission of the EIA report.

Review report and decision

31. (1) Unless the EIA processing application is discontinued under regulation 35, the processing authority must within 35 days of the submission of an EIA report on a proposal produce a written report on the review.

(2) The review report must state the decision of the processing authority on the EIA report under section 31(1) of the Act and set out –

- (a) if conditions are attached to an approval – the conditions, including any environmental management plan required under regulation 26 and any environmental bond recommended in the report;
- (b) if an additional study is recommended – the nature of the study;
- (c) if the report is not approved –
 - (i) the reasons for non-approval; and
 - (ii) any further action that should be taken in respect of the proposal.

- (3) Without limiting subregulation (1)(a), conditions of an approval may –
 - (a) specify the location of any particular activity;

- (b) specify the method of undertaking any activity;
 - (c) require the monitoring of any environmental impacts and reporting of them to the Director;
 - (d) specify maximum quantities of emissions of substances;
 - (e) specify the manner and location of the disposal of substances;
 - (f) require the undertaking of studies to determine how to reduce the discharge of substances or energy from any activities to which the approval relates;
 - (g) specify any procedures for cessation of operations and rehabilitation of land; and
 - (h) specify particular individuals or organizations who may carry out activities under the approval.
- (4) A review report should in addition set out –
- (a) the key issues identified in the EIA report;
 - (b) the key issues identified in the review;
 - (c) the standpoints of different interested parties;
 - (d) the quality and relevance of the EIA process in relation to the proposal;
 - (e) recommendations in respect of the EIA report's proposals and any suggested changes to the proposals;
 - (f) recommendations for future EIA action on the proposal based on the review.

(5) If the approving authority for a proposal is also the processing authority for it, the Director must issue directions for the review of the EIA report on the proposal to be done by the EIA Administrator or a review consultant, as required by section 28(5) of the Act.

(6) If the processing authority is the EIA Administrator, the Administrator must within 21 days of completing an EIA review –

- (a) enter the review report in the register; and
- (b) send a copy to the approving authority.

(7) If the processing authority is not the EIA Administrator, the authority must within 21 days of completing an EIA review –

- (a) send the review report to the EIA Administrator for entry in the register; and
- (b) keep a copy for its own records.

PART 5 – MISCELLANEOUS

Environmental bond

- 32.** (1) An environmental bond is a bond against the cost of –
- (a) restoration, improvement or remediation work on any area;
 - (b) compensation for loss or damage to property or income; or
 - (c) preventative or remedial action,

necessitated by the environmental or resource management impacts of a development activity or undertaking and ordered by a court under section 47 of the Act or undertaken by the Department.

(2) An environmental bond must be given by or on behalf of a proponent in relation to a proposal if –

- (a) the EIA review report on the proposal so recommends; or
- (b) the EIA Administrator considers the taking of a bond to be necessary for the purposes set out in subregulation (1).

(3) An environmental bond does not need to be taken from a proponent if –

- (a) a bond has already been taken from the proponent in respect of the proposal under a mining lease, a lease issued by the Native Land Trust Board or any similar provision; and
- (b) the EIA Administrator considers that the bond so taken adequately covers the cost of rehabilitation as described in subregulation (1).

(4) If required in relation to a proposal, a bond must be given by or on behalf of the proponent before the proposal can be approved.

(5) An environmental bond may be in cash, as contemplated by section 31(2) of the Act, or as indemnity insurance, or as a guarantee, or in any other form approved by the Director in any particular case with the consent of the Ministry of Finance.

(6) The amount of an environmental bond should be sufficient to cover the probable cost of the matters referred to in subregulation (1) for the foreseeable life of the activity or undertaking, and may include up to 15% contingency costs.

(7) The nature and amount of an environmental bond are as agreed between the Director and the proponent or, in the absence of agreement, determined by the CEO. The wording is as settled in each case by the Department.

Disposal of an environmental bond

33. (1) Money payable under a cash bond must be paid to the Environmental Trust Fund as provided by section 31(2) of the Act.

(2) An environmental bond is retained, and any indemnity or insurance or guarantee subsists, until the activity to which it relates ceases or the development is abandoned, or decommissioning of an undertaking has been completed. The bond may then be returned in whole or in part, or the indemnity, insurance or guarantee cancelled or varied, depending on the requirements for restoration, compensation or preventative or other action referred to in regulation 32(1).

(3) The decision under subregulation (2) is to be made by the Director in the light of –

- (a) compliance with the conditions of approval of a proposal;
- (b) the cost of restoration, compensation or preventative or other action; and
- (c) the proponent's ability to pay those costs.

(4) A proponent who is dissatisfied with a decision of the Director under this regulation may appeal in writing to the CEO, whose decision is final.

Compliance inspection

34. (1) After approval for a proposal has been granted, the EIA Administrator or an approving authority may cause a site or activity to be inspected –

- (a) for the purposes of section 32(2) of the Act; or
- (b) to ascertain whether there has been any change in the environmental condition of the site or the environmental impact of the activity on the surrounding area.

(2) Regulation 13 applies to compliance inspection as it applies to site inspection for scoping, with necessary modifications.

(3) If it is desired to take samples from a site during compliance inspection, the provisions of regulation 16 apply, with necessary modifications.

(4) If a proponent fails to comply with a reasonable request for compliance inspection or for the taking of samples, approval for the proposal may, on the recommendation of an inspector, be -

- (a) cancelled; or
- (b) suspended until site inspection has been carried out.

(5) Following a compliance inspection of a proposal site or activity, an inspector must send to the EIA Administrator a compliance report indicating whether the site or activity complies with the conditions of the approval.

- (6) When a compliance report is complete –
 - (a) section 19(2)(b) of the Act applies to it;
 - (b) it must be entered in the register kept under section 17 of the Act, and a copy sent to the proponent.

(7) If the inspector considers that there is non-compliance, the inspector may recommend that approval of the proposal should be –

- (a) cancelled for non-compliance with a term of the approval; or
- (b) suspended until specified matters of non-compliance are corrected.

- (8) A decision to cancel or suspend approval of a proposal –
 - (a) is made by the Director in the light of a recommendation under subregulation (4) or (6);
 - (b) must only be made after giving the proponent an opportunity to be heard, orally or in writing;
 - (c) must be made reasonably, having regard to the nature of the proposal and the seriousness of the non-compliance;
 - (d) must be communicated in writing to the proponent as soon as practicable after being made.

(9) The Director may require the proponent to reimburse reasonable costs incurred by the Director in compliance inspection, including transport and out-of-hours pay for inspectors and other staff of the Department.

(10) A proponent who is dissatisfied with a decision of the Director under this regulation may appeal in writing to the CEO, whose decision is final.

(11) This regulation does not affect sections 19 and 20 of the Act relating to the taking of samples and inspections generally and must be read consistently with those sections.

- (12) This regulation does not affect the powers of inspectors to enter and

inspect premises without notice, pursuant to section 20(1) of the Act, if the EIA Administrator considers that notice would defeat the purpose of an inspection.

Variation or cancellation of EIA approval

- 35.** (1) If EIA approval has been granted in respect of a development proposal and –
- (a) the Director or processing authority obtains new information that was not known to the authority when the approval was granted;
 - (b) there is a significant change in the circumstances relevant to the development proposal;
 - (c) there is an error or mistake in the approval; or
 - (d) the proponent requests a variation in the terms of the approval,

the Director may, on the written application of the proponent, or of the Director's own motion, vary the terms of the approval, including any conditions attached to it, by giving notice in writing to the proponent.

- (2) If the Director is satisfied –
 - (a) that approval of an EIA proposal was influenced by false or misleading information or by deceit on the part of the proponent; or
 - (b) that the environmental conditions of the site have changed to such an extent as to render the approval inappropriate,

the Director may cancel the approval and require the site to be restored as far as possible to the state before approval was given.

- (3) Before taking action under subregulation (1) or (2), the Director –
 - (a) must consult the relevant processing authority;
 - (b) may obtain the advice of an EIA consultant or review consultant; and
 - (c) must in writing inform the proponent of the intended action and give the proponent an opportunity to be heard.

(4) Any variation of an EIA approval requested by the proponent that would result in a material change in the use of the land to which the approval relates must be the subject of a fresh EIA screening application under these Regulations.

(5) A proponent who is dissatisfied with a decision of the Director under this regulation may appeal in writing to the CEO, whose decision is final.

Amendments to applications, etc.

36. (1) In order to facilitate the smooth running of the EIA process, the approving authority, the EIA Administrator or the processing authority, as the case may be (“the relevant authority”) may, by notice in writing to the proponent, suggest minor amendments to an EIA screening application, an EIA processing application, or an EIA report, instead of rejecting any of them for errors or omissions.

(2) The proponent, in response to a suggestion made under subregulation (1), may –

- (a) submit an amended application or report, as the case may be; or
- (b) notify the relevant authority in writing that no amendments will be made.

(2) The adoption by the proponent of amendments suggested under subregulation (1) does not imply that they will be accepted by the relevant authority or that any particular outcome will follow.

(4) The proponent may, before a final decision has been made on an application or report, in writing request the relevant authority to amend the application or report, both as to matters of substance and as to errors and omissions.

(5) If an amendment requested under subregulation (4) is one of substance, the relevant authority may refuse to accept it and may instead require the proponent to make a fresh application or submit a fresh report, as the case may be, paying any relevant fee and observing any relevant timetable.

(6) An agreement by the relevant authority to accept amendments requested under subregulation (4) does not imply that any particular outcome will follow.

Identity of corporate body

37. (1) Notwithstanding section 31(5) of the Act (which provides that an approved EIA may not be transferred) a proponent that is a corporate body and whose corporate identity changes must apply in writing to the Director for a change in the details of the body recorded in relation to the EIA.

(2) If satisfied that the nature of the proposed development will not be affected by the change of identity, and on receipt of the prescribed fee, if any, the Director must record in the register the amended details of the proponent.

(3) The Director may request any appropriate information or document from the proponent for the purposes of determining whether the amendment should be made.

(4) Any change in control of a body corporate renders an EIA approval in relation to that body corporate invalid, unless an amendment has been made under this

regulation.

(5) If the identity of the contact person for a proponent changes, the provisions of this regulation apply to the change, with necessary modifications, except that the change will not render an EIA approval invalid.

Discontinuance of application for approval

38. (1) A proponent may at any time give written notice to the processing authority that the proponent wishes to discontinue the EIA processing of a proposal.

(2) If a proponent gives notice of discontinuance, the processing authority must –

- (a) discontinue the processing of the proposal, incurring minimum costs in doing so;
- (b) give notice of the discontinuance to the Director, for entry in the register;
- (c) give public notice of the discontinuance in the same manner as notice is given of a scoping or review meeting.

(3) The processing authority may require the proponent to reimburse reasonable costs incurred by the authority in the EIA processing of the proposal to the date of discontinuance, and of notice given under paragraph (c). Any dispute as to the reasonable cost of discontinuance is to be resolved by the CEO.

Registration of consultants

39. (1) For the purpose of Part 4 of the Act, accreditation of consultants will be done by way of registration.

(2) The categories of consultant are -

- (a) principal consultant;
- (b) technical assistant;
- (c) assistant consultant;
- (d) review consultant.

(3) The criteria for registration in each category of consultant are as determined by the Director in writing from time to time and notified by publication in the *Gazette* and at the offices of the Ministry.

(4) Registration is on an individual basis, but a registered consultant must provide information as to any corporation or partnership of which the consultant is a member or employee.

- (5) A person who wishes to be registered as an EIA consultant or a review consultant for the purposes of these Regulations must –
- (a) apply to the EIA Administrator on Form 3 in Schedule 1 to these Regulations;
 - (b) specify the category of consultancy applied for;
 - (c) provide the information required by the form; and
 - (d) pay the prescribed fee, if any.
- (6) On receipt of an application in due form, the Director –
- (a) may call for documents, interview the applicant and cause enquiries to be made as to his or her suitability for registration;
 - (b) obtain advice from technically qualified persons as to the suitability of the applicant for registration; and
 - (c) must as soon as practicable make a decision whether to register the applicant and in what category of consultant.
- (7) Registration is for 3 years in the first instance and is renewable for 3 years on application, and on payment of the prescribed fee, if the Director is satisfied that the applicant remains qualified as a consultant.
- (8) A person wishing to change the category of registration must apply for fresh registration, paying the appropriate fee.

Loss of registration as a consultant

- 40.** (1) The Director may issue a Code of Practice for consultants registered under these Regulations, after seeking the advice of any relevant professional body and of individuals with extensive experience in EIA matters.
- (2) A Code of Practice issued under subregulation (1) must be published in the *Gazette* and at the main offices of the Ministry and made available to the public for purchase at a reasonable price.
- (3) If the Director reasonably considers that a registered consultant is in breach of any registration criteria, or the Code of Practice, or is not performing duties as required by the Act or these Regulations, the Director may cancel, or refuse to renew, the registration of the consultant.
- (4) Registered EIA and review consultants must comply with the EIA Consultants' Code of Conduct published by the Director from time to time.

(6) If the Director proposes to de-register a consultant for any reason, the Director must give the consultant the opportunity to be heard, orally or in writing.

(7) A person who is dissatisfied with a decision of the Director under this regulation may appeal in writing to the CEO, whose decision is final.

Environmental Register

41. (1) The environmental register maintained under section 17 of the Act must include information about –

- (a) every site inspection report produced under regulation 15;
- (b) the result of every screening of proposals under Part 2;
- (c) every EIA report produced under Part 4;
- (d) every review of an EIA report under Part 4;
- (e) every EIA approval granted under the Act;
- (f) every compliance report produced under regulation 34;
- (g) any variation of EIA approval granted under regulation 35;
- (h) any amendment of the identity of a corporate body accepted under regulation 36;
- (i) every consultant registered under these Regulations;
- (j) every environmental bond taken under these Regulations.

(2) The register or a copy of it must be –

- (a) kept at the offices of the Director; and
- (e) made available for inspection and copying by the public during normal office hours on payment of the prescribed fee;
- (f) made available for inspection and copying by approving authorities without payment of a fee.

(2) The approving authority for a proposal must keep a copy of relevant entries in the register relating to all proposals that have been submitted to it.

(4) The register may be kept in an electronic form, but copies of extracts from it must be made available on paper if requested, on payment of the prescribed fee.

Confidentiality of information

42. (1) Documents and information provided to an authority or the Department for purposes of Part 4 of the Act or these Regulations are public documents and information unless a certificate of confidentiality is issued by the Director in respect of any particular document or item of information.

(2) A proponent who wishes any document or item of information to remain confidential must in writing apply to the Director for a certificate of confidentiality in respect of the document or item, stating the reason why the certificate should be issued.

(3) The Director may only issue a certificate of confidentiality in respect of a particular document or item of information if satisfied that –

- (a) it contains or is scientific data that could be compromised by its publication;
- (b) the commercial interests of the proponent would be harmed by its publication; or
- (c) publication would in other respects be against the public interest.

(4) If a certificate of confidentiality is issued in respect of a document or item of information, the document or item -

- (a) does not need to be revealed in public consultations on the proposal;
- (b) must not be entered in the register.

(5) A certificate of confidentiality must be kept under review by the Department and must be cancelled once the circumstances giving rise to it no longer exist.

(6) This subregulation does not affect the intellectual property status of any document or item of information.

EIA Guidelines

43. (1) Pursuant to section 62 of the Act, the Director may issue written guidelines –

- (a) as to the form of TORs, the EIA report, the review report, notices of scoping and review meetings and other documents required by these Regulations for which the form is not prescribed;
- (b) as to any other matter in relation to these Regulations that the Director considers appropriate for guidelines.

(2) Guidelines issued under subregulation (1) must be published in the *Gazette* and at the main offices of the Ministry and made available to the public for purchase at a reasonable price.

Notices

44. (1) Unless otherwise provided, and subject to subregulation (2), notice required by these Regulations may be given electronically –

- (a) by a proponent to an approving authority or the EIA Administrator or Director;
- (b) by an approving authority or the EIA Administrator or Director to a proponent, if the proponent has given an electronic address for receipt of such notices.

(2) If service of a notice or other document is to be proved in a court, it must be effected -

- (a) by personal service on the contact person for a proponent;
- (b) by affixing a notice on the site of the proposal; or
- (c) by registered post to the address of the proponent shown on Form 1, in which case service is presumed to have been effected 2 days after posting.

Forms

45. (1) The forms set out in Schedule 1 are prescribed for use in connection with the matters to which they relate

(2) The Director may by Order amend Schedule 1.

(3) A deviation from a prescribed form does not invalidate an application, approval or notice if the matters contained in the form are sufficiently clearly stated.

(4) A form may be submitted electronically, but a hard copy of the signed form must also be provided.

Fees

46. (1) The fees set out in Schedule 2 are prescribed in respect of the matters to which they relate.

(2) The fees for screening and processing of proposals may vary according to the size, type and value of the proposed activity or undertaking.

Recovery of moneys

47. (1) Fees, costs and expenses payable under these Regulations are recoverable as a civil debt owing to the Government, if the service to which they relate has been provided..

(2) Fees, costs and expenses paid or recovered under these Regulations must

be paid into the Environment Trust Fund established by section 55 of the Act in accordance with procedures established under the Public Finance Management Act..

Appeals

48. (1) When deciding an appeal under these regulation, the CEO must give the appellant and the EIA Administrator or Director the opportunity to be heard, in writing or in person, and to produce evidence and call witnesses, and must give reasons for the decision on the appeal.

(2) If an appeal involves a technical issue, the CEO must obtain appropriate technical advice from a person, other than the EIA Administrator or staff of the Department.

(3) The CEO may, instead of adjudicating on any matter, on the application of either party, or of the CEO's own motion, refer any matter that is the subject of an appeal to the Environmental Tribunal, in accordance with the rules of the Tribunal.

SCHEDULE 1 (Regulation 45)

FORMS

Form: EMA/EIAP 1

EIA SCREENING APPLICATION (Regulation 4)

Legal background:

1. A person who carries out any development activity or undertaking which is subject to the environmental impact assessment (EIA) process without an approved EIA report commits an offence and is liable on conviction to a maximum fine of \$750,000 or to imprisonment not exceeding 10 years or both.

2. In addition, the Director may apply to the court for an order to stop the work.

3. A person who contravenes –

(a) any requirement under Part 4 of the Act; or

(b) a condition for approval of a development proposal or an approved EIA report,

commits an offence and is liable on conviction to a maximum fine of \$250,000 or to imprisonment not exceeding 3 years or both.

Guidance notes:

1. This form sets out the information on a development proposal that the approving authority requires to make a decision on whether an EIA report is required on the proposal ('screening').

2. The proponent should follow the format of this form as far as possible and should

provide detailed and accurate descriptions of the project location, activities, and potential impacts. If details are not available, reasons must be given.

3. *Clear site mapping of the location, structures and physical features of the proposed undertaking must be provided on appropriately scaled diagrams and attached to this form.*

4. *A fee of \$100 is payable to the approving authority on submission of this form and should accompany it.*

Part A – General Information

A1. Title of the proposed development activity

A2. Approving authority for the proposal

A3. Proponent

Name of Proponent (Individual or body corporate)

Address

A4. Contact person for purposes of Environmental Impact Assessment

Name

Position (if body corporate)

Address

Telephone:

Facsimile:

Mobile:

E-mail:

A5. Nature of the development proposal

A6. Estimated value of the completed project if approval is granted

A7. Project consultant

Contact Person:

Postal Address:

Telephone:

Facsimile:

Mobile:

E-mail:

A8. No previous application for approval of this proposal

Previous decision on this proposal (Give details)

A9. Landowner

Contact Person:

Postal Address:

Telephone: Facsimile:
 Mobile: E-mail:

Nature of title to the land

State whether the landowner (if not the proponent) has consented to the proposed development, with details of the circumstances

If the land is native land, state the view of the NLTB on the proposal

A10. Local authority

(If not the approving authority)

Contact Person:
 Postal Address:

Telephone: Facsimile:
 Mobile: E-mail:

Part B – Details of the Development Proposal

B1. Nature of the site

B2. Nature and scope of the proposed development

B3. Location of the proposed development

(The project profile must include plans showing the location of the proposal and its surrounding environment.)

B4. Reasons/justification for the proposal

B5. Description of the proposed development

(i) Geographical Location

Give a written description of the proposed site, including boundaries.

(ii) Physical Features

Major physical features of the site e.g. large buildings, other large structures, roads, pipelines, transmission lines, marine transport facilities, etc.

(iii) Area to be affected by the development

Description of local environment including topography, water courses, adjacent lands.

B6. Alternatives

- (i) Alternatives that are being considered, or that have been considered and rejected -
 - Sites
 - Construction methods
 - Operating procedures
- (ii) Reasons for the rejection of those alternatives

B7. Public consultations

- (i) State what public consultations have been held on the proposal, if any;
- (ii) State what public response there has been to the proposal, as evidenced by consultations or otherwise.

B8. Inspection

Dates on which inspections can be carried out

(Note: The proponent must ensure that all necessary consents and approvals (if the proponent is not the owner of the site) have been or will be obtained so that inspection of the site can take place)

Part C – Environmental impact of the proposed activity or undertaking

C1. Environmental impact

- (i) State in general terms what environmental or resource impacts that the proposal is likely to have.
- (ii) State how such impacts will be managed or mitigated.

C2. Pollution incidents

Pollution incidents that might be generated by the proposal

(A 'pollution incident' is the introduction, either directly or indirectly, of a waste or pollutant into the environment, which results in harm to living resources and marine life, hazards to human health, hindrance to marine activities including fishing and other legitimate uses of the sea, impairment of quality for use of water, air or soil, reduction of amenities or the creation of a nuisance)

C3. Construction phase (if applicable)

- (i) Proposed date of commencement of construction
(First physical construction activity on site)
- (ii) Type of construction work e.g. dredging etc. and the processes to be followed
- (iii) Estimated total construction period
(If staged, list each stage and its estimated duration)
- (iv) Potential sources of pollution during the construction phase, including airborne emissions, liquid effluents and solid waste materials

(v) Hazardous substances and pollutants that might be discharged during the construction phase

(vi) Any GMOs and LMOs involved in the construction activity

C4. Operation of the undertaking or activity on completion of construction

(i) Proposed date of commencement of operation of the undertaking or activity

(ii) Description of the operation

(iii) Potential sources of pollution from the undertaking or activity, including airborne emissions, liquid effluents and solid waste materials

(iv) Hazardous substances and pollutants that might be discharged by the undertaking or activity

(v) Any GMOs and LMOs involved in the operation of the undertaking or activity

C5. Environmental monitoring

(i) Description of environmental monitoring proposed during construction and operation of the undertaking

(ii) Estimated period of monitoring

(iii) Parameters to be monitored such as water quality, effluent quality etc, with estimated time frames

Part C – Declaration by/on behalf of proponent

I/We apply for EIA screening of the proposal referred to above.

I/We certify that the particulars given above are true and correct to the best of my/our knowledge and belief

I/We confirm that all necessary consents and approvals (if they are not the owners) have been/will be obtained so that inspection of the proposal can take place

I/We agree to inspections being carried out and samples being taken in accordance with the regulations.

I/We attach the fee of F\$.....

Signature of applicant

Full name in block letters

Name of company (if applicable)

Applicant's position in company (if applicable)

Date

Note: If the proponent is a corporate body this form must be signed in accordance with the Articles of Association or other constituent document of the body.

Locality Plan:

The form must have attached to it a locality plan sufficient to identify the land or premises to which the proposal relates and any other information, plans or drawings needed to describe the proposed development.

The locality plan must clearly show the location of the site in relation to the surrounding area. It must be of sufficient quality to be used by Officers of this Department to locate the site for the purposes of a site inspection.

5 hard copies and one electronic copy of this completed form and of the locality plans, together with the fee of F\$......, must be sent to the approving authority for the proposal, with a copy to –

The EIA Administrator

Department of Environment

P.O.Box 2131

Government Buildings

Suva

(Or direct to the EIA Administrator, if the Administrator is the approving authority)

Part D – For official use

The development proposal comes under:

- Part 1 of Schedule 2 of the Environment Management Act
- Part 2 of Schedule 2 of the Environment Management Act
- Part 3 of Schedule 2 of the Environment Management Act

Proposal number allocated :

Approving Authority for the proposal :

Form: EMA/EIAP 2

EIA PROCESSING APPLICATION

(Regulation 10)

Part A – General Information

- A1. Proposal number**
- A2. Title of the proposed development activity**
- A3. Approving authority for the proposal**

A4. Proponent

Name of Proponent (Individual or body corporate)

Address

A5. Business Registration No.(if applicable)**A6. Contact person for purposes of EIA**

Name

Position (if body corporate)

Address

Telephone:

Facsimile:

Mobile:

E-mail:

Part B – Nature of the application**A7. Result of screening application**

- Part 1 proposal (for processing by the EIA Administrator)
- Part 2 proposal (for processing by the approving authority)
- Part 3 proposal (for decision by the EIA Administrator)

Date of decision

A8. Previous decision on processing of this proposal

- No previous application for EIA processing
- Previous decision on EIA processing (Give details)

A9. Particulars of any changes in the proposal from those in the screening application**Part C - Proposed Terms of Reference for an EIA report**

Set out the proposed Terms of Reference that the proponent considers would adequately set the parameters for an EIA study on the proposal.

(The EIA report based on the EIA study will determine the conditions for EIA approval of the proposal. It must identify the potential impact of the proposal on the surrounding environment and suggest possible mitigation measures.)

Part D - Declaration by applicant

I/We certify that the particulars given above are true and complete to the best of my/our knowledge and belief.

I/We agree to inspections being carried out and samples being taken in accordance with the regulations.

I/We apply for EIA processing of the proposal referred to above.

I/We attach the fee of F\$.....

Signature of applicant
Full name in block letters
Name of company (if applicable)
Applicant's position in company (if applicable)

Date

Note: If the proponent is a corporate body this form must be signed in accordance with the Articles of Association or other constituent document of the body.

5 hard copies and one electronic copy of this completed form and of the locality plans, together with the fee must be sent to the approving authority for the proposal, with a copy to -

The EIA Administrator
Ministry of Environment
P.O.Box 2131
Government Buildings
Suva

(Or direct to the EIA Administrator, if the Administrator is the approving authority)

Form: EMA/EIAP 3

**APPLICATION FOR REGISTRATION/RENEWAL AS AN
EIA/REVIEW CONSULTANT**
(Regulation 39)

When completing this application please ensure that all sections are completed and that all requested information is provided

Official use only
Registration No.
Fee payable \$..... (see below)

Section 1 Tick consultant category applied for –

- Principal consultant
- Technical assistant
- Assistant consultant

- Review consultant

Section 2 Personal Information

Family Name

Given Name:

Prefix/Title:

Address:

Telephone:

Mobile:

Fax:

E-mail:

Section 3

Details of any company or partnership of which the consultant is a member or employee:

Company or firm name and address

Position in company or firm

Section 4 Qualifications

List professional qualifications as an environmental consultant.

If none, set out details of experience in environmental consultancy work in the category applied for.

Section 5 Previous application

- No previous application for registration as a consultant
- Previous application -
- As a principal consultant
Date Result
 - As a technical assistant
Date Result
 - As an assistant consultant
Date Result
 - As a review consultant
Date Result

Section 6 Declaration

I hereby apply for registration/renewal of registration as –

- Principal consultant
- Technical assistant
- Assistant consultant
- Review consultant

for purposes of the Environmental Management (EIA) Regulations.

I agree to the publication of my name (and the company name and contact details) in the environmental register.

I confirm that the information given in this application is true and complete to the best of my/our knowledge and belief.

I have not been convicted of any criminal offence in any country, other than motoring or minor offence resulting in a fine of less than \$xxx. (Or provide details)

I have read and agree to comply with the EIA Consultants Code of Conduct
I will not reproduce the contents of any EIA report prepared by me as a consultant except with the permission of the client and the Ministry of Environment.

I understand that the giving of false answers in this application may provide grounds for the withdrawal of registration as a consultant.

I have no objection to the Ministry making copies of this form available to other governmental or inter-governmental organisations.

Signed

Witnessed

Date

Company name (if any)

3 copies of this form duly completed must be sent to -
The Director
Ministry of Environment
P.O.Box 2131
Government Buildings, Suva

SCHEDULE 2
(Regulation 46)

FEES

| Item | F\$(VIP) |
|---|-----------------|
| Application for screening of a development proposal | 250 |
| Application for EIA processing of a proposal (Fees are charged according to the value of development proposed). | |
| a. Value not exceeding \$249,999..... | 1000 |
| b. Value exceeding \$250,000 but not exceeding \$499,999 | 1500 |
| c. Value exceeding \$500,000 but not exceeding \$999,999 | 2000 |
| d. Value exceeding \$1,000,000 but not exceeding \$2,499,999 | 2500 |
| e. Value exceeding \$2,500,000 but not exceeding \$4,999,999 | 3000 |
| f. Value exceeding \$5,000,000 but not exceeding \$7,499,999 | 3500 |
| g. Value exceeding \$7,500,000 but not exceeding \$9,999,999 | 4000 |
| h. Value exceeding \$10,000,000 | 5000 |
| Application for registration as a consultant – | |
| Principal consultant | 1000 |
| Technical assistant | 500 |
| Assistant consultant | 300 |
| Review consultant | 500 |
| Renewal of registration as a consultant | |
| Principal consultant | 1000 |
| Technical assistant | 500 |
| Assistant consultant | 300 |
| Review consultant | 500 |
| Inspection of the register (per hour) | 20 |
| Taking a copy from the register (per page) | 5 |
| Variation of a proposal | 50 |
| Amendment of identity | 50 |

Dated this day of 2007

Bernadette R. Ganilau

Minister for Labour, Industrial
Relations, Tourism and Environment

EXPLANATORY NOTE

Part 4 of the Environment Management Act 2005 sets out the framework for the Environmental Impact Assessment process which must be applied to most proposals for development activities or undertakings before they can be approved. The Act leaves some details to be filled in by regulations, and these Regulations, made under section 61 of the Act, provide the details.

2. The regulations say –
 - (a) what information must be contained in the application form when a development proposal is submitted for screening;
 - (b) how the approving authority is to screen proposals to decide whether they need an EIA report;
 - (c) how development proposals are to be submitted to the approving authority for EIA processing;
 - (d) if a report is needed, how the terms of reference for the report are drawn up, and what needs to go into the report;
 - (e) how the EIA report is published and reviewed; and
 - (f) how approval of the report is granted or refused.
3. The regulations make detailed rules about site inspections and the making of records of the site. They also say how notices are to be given to inform the public about site inspections and opportunities for comment on proposals.
4. The regulations say how consultants can be registered under the Act. They also provide for amendments of applications and variations of approval if necessary.
5. The regulations prescribe a number of forms in a Schedule. The format of certain other documents can be recommended by the Director in Guidelines.
6. The regulations prescribe the fees payable for certain services in connection with the EIA process and require proponents to pay the cost of other services. They provide for proponents to enter into an environmental bond in certain circumstances.
7. The Regulations will come into force at the same time as Part 4 of the Environment Management Act and will be administered together with the Act by the Ministry of Environment.