

The Investment Bill 1990

(NAME OF BILL)

CONTENTS: Bill
Objects and Reasons
Notice of Presentation
Covering letter from Minister to Clerk to Parliament
(Authorisation from Minister of Finance under s.60 of Constitution)

FROM: Attorney General's Chambers 20/1/90

TO: Minister of Commerce & Primary Industries
(for signing Objects & Reasons, Notice of Presentation and covering letter to Clerk)

TO: Minister of Finance
(for signing of letter to Clerk signifying Cabinet approval under s.60 of Constitution)

TO: Clerk to National Parliament 20/1/90
(for certificate by Speaker)

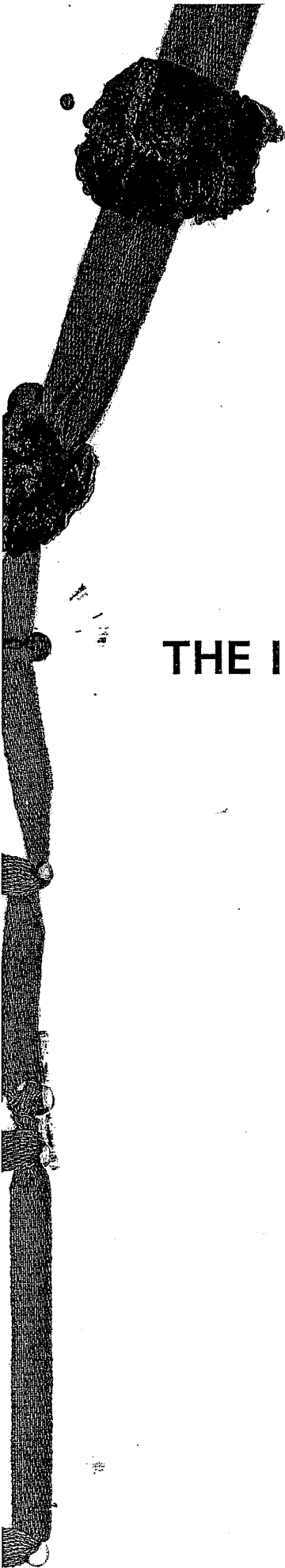
✓ TO: Attorney General's Chambers
(for printing)

TO: Clerk to National Parliament
(for reference during 1st, 2nd and 3rd Readings)
(Date passed: 22/11/90 Act No. 14/90)

✓ TO: Attorney General's Chambers 5/12/90
(for checking before Assent)

TO: Governor-General 6/12/90
(for Assent)

TO: Clerk to National Parliament 5.12.90
(for distribution)
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THE INVESTMENT ACT 1990

(NO. 14 OF 1990)



THE INVESTMENT ACT 1990

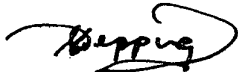
(NO. 14 OF 1990)

Passed by the National Parliament this twenty-second day of November 1990.

This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true and correct copy of the said Bill.


J.M. Tuhaika
Clerk to the National Parliament

Assented to in Her Majesty's name and on Her Majesty's behalf this sixth day of December 1990.


G.G.D. Lepping
Governor-General

Date of commencement: see section 1.

AN ACT to Repeal the Foreign Investment Act 1984 and to make other provisions in lieu thereof, for the promotion of local and foreign investment.

ENACTED by the National Parliament of Solomon Islands.

THE INVESTMENT ACT 1990

ARRANGEMENT OF SECTIONS

Section:

1. Short title and commencement.
2. Interpretation.
3. Constitution of the Board and its Secretariat.
4. Functions of the Board.
5. Approval of application for Foreign Investment.
6. Foreign investor to register with Board and possess certificate of approval.
7. Application for incentives by investor.
8. Prescribed undertaking may make application.
9. Further tax exemption period or additional incentives subject to certain restrictions.
10. Criteria for approval of investment or incentives.
11. Foreign investment within approved period.
12. Registers.
13. Approval of Board required to vary investment.
14. Guarantees.
15. Board may direct any approval to be withdrawn.
16. Minister to prescribe fees, etc.
17. Regulations.
18. Provisions supplementary to provisions in any other Act.
19. Technology and any other external agreements.
20. Transitional and savings.

1. This Act may be cited as the Investment Act 1990, and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.
2. In this Act, unless the context otherwise requires -
 "approved enterprise" means an investment approved by the Board under sections 5, 6, 7 or 8;
 "Board" means the Investment Board established under section 3;
 "foreign investment" means an industrial, commercial, business or service undertaking carried on by a foreign investor;
 "foreign investor" means a person who is not a citizen of Solomon Islands and includes -
 (a) a body corporate or any other organisation established in Solomon Islands, in which a foreign investor holds the whole or any part of the equity or ownership in the capital;
 (b) a branch in Solomon Islands of a body corporate or any other business organisation not established in Solomon Islands;
 "incentives" means the benefits that an approved enterprise may qualify for under the Income Tax Act, the Customs and Excise Act and other relevant or qualifying Acts;
 "investor" means any person or company including a foreign investor;
 "Minister" means the Minister for the time being charged with responsibility for investment in Solomon Islands;
 "prescribed undertaking" means any industrial, commercial, business or service undertaking in operation in Solomon Islands on the date of commencement of this Act;
 "relevant or qualifying Act" means any law under which an investor may qualify for the grant of incentives or exemptions;
 "technology or external agreement" means an agreement involving payments in foreign currency for royalty or any professional services provided.
3. * (1) The Investment Board established under the Foreign Investment Act 1984, (repealed by this Act) shall continue to function as the Investment Board until a new Board is appointed under the provisions of this Act.

Short title
and commence-
ment.

Interpre-
tation.

Caps. 61 and
58.

Constitution
of the
Board and
its secretariat.

(2) The Board appointed under the provisions of this Act shall consist of the Minister as chairman and such other members being not less than six nor more than eight appointed by the Minister with the approval of Cabinet.

(3) The quorum for a meeting of the Board shall be one half of the number of members, one of whom shall be the chairman or his designate, who shall in addition to an original vote have a casting vote in case the voting is equal.

(4) The Board shall meet when the chairman requires but in any event not less than once in every three months.

(5) The Investment Division of the Ministry dealing with investment for the time being shall act as the secretariat to the Board.

(6) The Chief Officer of the Investment Division shall be the secretary of the Board who shall maintain the records of the proceedings of the Board and all other such records and data as may be required by the Board or chairman.

Functions of
the Board.

4. The functions of the Board shall be -
- (a) to approve any foreign investment in Solomon Islands in terms of this Act;
 - (b) to approve any technology or external agreements;
 - (c) to approve any application for the grant of incentives under any relevant or qualifying Act;
 - (d) to co-ordinate with relevant Ministries, Provincial Governments, Honiara Town Council and other Government Agencies in order to facilitate the obtaining of approval for proposed investment;
 - (e) to issue certificates of approval to approved investors;
 - (f) to monitor compliance with the terms and conditions of any approval granted under this Act and other relevant or qualifying Acts; and
 - (g) to review and advise the Government on policies and procedures relating to the promotion and regulation of investments, whether local or foreign and matters connected therewith.

Approval of
application
for foreign
investment.

5. (1) On receipt of an investment application from a foreign investor, the Board shall give notice of the application to the appropriate Ministries, the relevant Provincial Governments or the Honiara Town Council, as the case may be, and seek their approval in respect of the investment application.

(2) On receipt of confirmation from the appropriate Ministries, the relevant Provincial Governments or the Honiara

Town Council, as the case may be, that the investment proposal complies with the requirements of the relevant or qualifying laws, the Board may approve such investment proposal as an approved enterprise and grant the investor a certificate of approval.

6. Subject to the provisions of section 20, from and after the commencement of this Act no foreign investor shall engage in any investment in Solomon Islands, unless the foreign investor is registered with the Board and is in possession of a certificate of approval in terms of this Act.

Foreign investor to register with Board and possess certificate of approval.

7. (1) Any investor may make application in the prescribed form to the Board for the grant of incentives in respect of any proposed or existing investment or enterprise.

Application for incentives by investor.

(2) Where the Board receives an application referred to in subsection (1), the Board shall give notice of the application to the appropriate Ministries and Government Agencies and seek their approval in respect of the investment or enterprise.

(3) On receipt of confirmation from the appropriate Ministries and Government Agencies that the investment or enterprise is approved as it complies with the requirements of the relevant or qualifying Acts, the Board may approve such investment or enterprise as an approved enterprise.

(4) Where the investment or enterprise does not qualify for incentives in terms of any relevant or qualifying Acts, the Board shall inform the applicant accordingly.

(5) On receipt of approval from the Board, the approved enterprise shall be entitled to the agreed incentives provided for under the Income Tax, the Customs and Excise Act and other relevant or qualifying Acts.

Caps. 61 and 58.

8. Any prescribed undertaking may apply to the Board for the grant of incentives in the manner provided under section 7 and the provisions of section 7 shall *mutatis mutandis* apply in relation to the application.

Prescribed undertaking may make application.

* 9. (1) No approved enterprise shall be entitled to more than one tax exemption or other incentives within the agreed period, in respect of any particular investment or undertaking, so however, that any such approved enterprise may make application for a further tax exemption period provided -

Further tax exemption period or additional incentives subject to certain restrictions. *

(a) a substantial additional investment is proposed; and

(b) the approved enterprise has satisfied the conditions stipulated in relation to its original investment, *and*

(2) Where the Board is satisfied that an approved enterprise referred to in subsection (1) has satisfied the conditions stipulated in its original investment and that the additional investment is of a kind that would be of benefit to Solomon Islands, it may recommend to the Commissioner of Inland Revenue and the Comptroller of Customs and Excise, as the case may require, to grant the approved enterprise further tax exemptions not exceeding a period of five years, and other incentives it may qualify for in terms of the investment.

Criteria for approval of investment or incentives.

10. (1) In approving an application under sections 5,7,8, or 9, the Board shall satisfy itself -

- (a) that the investment would further the economic development of, or be of benefit to Solomon Islands;
- (b) that citizens of Solomon Islands would be employed, except where the employment of foreign nationals is necessary and that training would be provided to citizens of Solomon Islands at technical, skilled and managerial levels;
- (c) that local raw materials and supplies would be used as far as practicable;
- (d) that the enterprise or investment has or may have the potential to promote exports or to substitute imports;
- (e) of the extent to which the proposed investment would be dispersed in the provinces; and
- (f) of the extent and capacity to transfer technology.

(2) Where the application referred to in subsection (1) is in respect of a foreign investment, the Board shall in addition to the conditions specified in that subsection, have particular regard to -

- (a) the maximum and minimum total capital investment and the percentage of foreign investment in the equity or ownership in the capital of the approved enterprise or investment; and
- (b) the value of such assets where the investment is in the form of tangible assets, other than foreign currency.

Foreign investment within approved period.

11. If any approved foreign investment is not made within the approved period or such extended period as the Board may permit on the application of the foreign investor or enterprise, the certificate of approval granted under the provisions of this Act shall be deemed to have been terminated.

12. The Board shall maintain a register of approved enterprises which shall be in such form and contain such particulars as the Minister may specify.

Registers.

13. (1) Except with the approval of the Board, no approved enterprise shall -

Approval of Board required to vary investment.



(a) acquire any interest in or take over any other enterprise;

(b) diversify into any other non-related activity, unless otherwise specified in the certificate of approval, or

(2) Where the approved enterprise is a foreign investment, such investment or enterprise in addition to complying with the requirements of subsection (1) shall not, except with the prior approval of the Board -

(a) increase its approved percentage of foreign investment; or

(b) alter or change its majority shareholdings.

(3) Where an approved enterprise seeks approval from the Board to effect any change mentioned in subsections (1) or (2), the Board shall not unreasonably withhold such approval.

14. Subject to current Exchange Control Regulations, a foreign investor shall be entitled in respect of an approved enterprise to transfer out of Solomon Islands in foreign currency at the prevailing official rate of exchange and after payment of taxes, if any -

Guarantees.

(a) the proceeds of sale of all or any part of the approved enterprise;

(b) the dividends in case of a body corporate and profits in other cases from the approved enterprise.

15. (1) Where any approved enterprise fails to comply with the provisions of this Act or the provisions of the certificate of approval, the Board may -

Board may direct any approval to be withdrawn.

(a) direct the respective ministries to withdraw, alter or disallow any or all incentives granted; or

(b) withdraw the certificate of approval.

(2) Before taking any action under subsection (1), the approved enterprise shall be informed in writing of the nature of the contravention or non-compliance and be afforded an adequate opportunity to represent its case, and the Board may, if it thinks fit permit an opportunity for the contravention or non-compliance to be corrected.

Minister to
prescribe
fees, etc.

16. The Minister may by order prescribe fees for applications, certificates of approval and other charges.

Regulations.



17. (1) The Minister may, in consultation with the Board, make regulations for the purposes of carrying this Act into effect, and in particular, without prejudice to the generality of the foregoing with respect to any of the following matters -

- (a) prescribe charges for anything required to be done by the Board;
- (b) prescribe forms for application, certificates or any other documents to be issued;
- (c) prescribe the procedure to be followed in forwarding an application under this Act; or
- (d) prescribe any matter which may be or is required to be prescribed under the provisions of this Act.

(2) Regulations made under subsection (1) of this section may make different provisions for different classes or categories of investments.

Provisions
supplementary
to provisions
in any other
Act.

18. The provisions of this Act shall be supplementary to, but not in derogation of any other Act.

Technology
and any other
external
agreements.

19. No investor shall enter into any technology or other external agreement in relation to any investment without the prior approval of the Board.

Transitional
and savings.

20. (1) The Foreign Investment Act 1984, (hereinafter referred to as the "repealed Act") is hereby repealed.

(2) Notwithstanding such repeal from and after the date of coming into operation of this Act -

- (a) any certificate of approval granted under the repealed Act shall continue to be valid on such terms and conditions of approval for the period stipulated therein;
- (b) a foreign investor shall be entitled to enjoy any investment guarantee approved under the repealed Act for such approved period; and
- (c) any foreign investor as defined in this Act, who is operating any enterprise without approval or registration under the repealed Act shall hereinafter be required to obtain approval from the Board and such approval shall not be unreasonably withheld.

