



THE FOREIGN INVESTMENT BILL 2005



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A

BILL

Entitled

AN ACT TO PROVIDE FOR REGISTERING AND MONITORING FOREIGN INVESTORS WHO CONDUCT INVESTMENT ACTIVITIES IN A MANNER THAT ENCOURAGES FOREIGN INVESTMENT IN SOLOMON ISLANDS AND TO REPEAL THE INVESTMENT ACT (CAP 142), AND FOR RELATED PURPOSES.

ENACTED by the National Parliament of Solomon Islands.

THE FOREIGN INVESTMENT BILL 2005**ARRANGEMENT OF CLAUSES**

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SCHEDULE

PART 1 - PRELIMINARY

Short title and
commencement

1. (1) This Act may be cited as the Foreign Investment Act 2005.

(2) This Act comes into operation on the date fixed by the Minister by notice published in the Gazette.

Interpretation

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

“application” means an application to register an investment activity made to the Registrar under section 15;

“certificate of registration” means a certificate of registration issued under section 20 to a foreign investor for the purpose of conducting an investment activity specified in the certificate;

“Committee” means the Investment Facilitation Committee established under section 25;

“day” means a day other than Saturday, Sunday or a public holiday;

“foreign investor” means a person investing or intending to invest in Solomon Islands (whether by himself, as a member of a joint venture, as a partner in a partnership, as a trustee or otherwise) who or which is -

(a) a natural person who is not a citizen of Solomon Islands;
or

(b) a body corporate which is established, registered or incorporated outside Solomon Islands or, if established, registered or incorporated in Solomon Islands, in which a foreign investor is a member entitled to exercise at least one vote or a shareholder holding at least one voting share (as the case may be);

“investment activity” means a commercial, economic, industrial or professional activity carried on in Solomon Islands as a business or part of a business;

“prohibited activity” means an investment activity that a person is prohibited from undertaking by a law of Solomon Islands (other than this Act);

“Register” means the Register of Investment Activities Conducted by Foreign Investors kept under section 6;

“Registrar” means the Registrar of Foreign Investment appointed by section 3;

“registration” means registration of an investment activity under Part 3;

“reserved activity” means an investment activity specified in the reserved list;

“reserved list” means the reserved list established under section 9.

(2) A reference in this Act to the conduct of an investment activity by a foreign investor includes a reference to -

- (a) the foreign investor conducting the investment activity;
- (b) an agent or employee of the foreign investor conducting the investment activity for and on behalf of the foreign investor; and
- (c) a business owned or operated by the foreign investor that is conducting the investment activity.

PART 2 - ADMINISTRATION

✓ 3. (1) There is a Registrar of Foreign Investment.

**Registrar of
Foreign
Investment**

(2) The person from time to time holding or acting in the position of Director of the Investment Division of the Department responsible under the Minister for administering this Act is the Registrar.

✓ 4. (1) The functions of the Registrar are to -

**Functions and
powers of
Registrar**

- (a) review the reserved list;
- (b) advise the Minister whether an investment activity should or should not, in the Registrar’s opinion, be included in the reserved list;
- (c) receive and process applications for registration of investment activities;
- (d) on application by foreign investors, register investment activities and issue certificates of registration for those investment activities;

- (e) monitor compliance by foreign investors with this Act and subsidiary legislation made under this Act;
- (f) monitor, and report to the Minister on, the conduct of investment activities by foreign investors in Solomon Islands; and
- (g) carry out any other functions imposed on him under this Act.

(2) The Registrar has power to do all things that are necessary or convenient to be done for or incidental to the proper performance of his functions.

Delegation by
Registrar

✓ 5. (1) Subject to this section and the directions of the Minister, the Registrar may, in writing, delegate any of his powers and functions under this Act to a public officer.

(2) The Registrar shall not delegate -

(a) his functions of reviewing the reserved list and advising on whether activities should or should not be included in the reserved list under sections 4(1)(a) and (b) and 10; and

(b) his power of delegation;

(3) The Registrar shall not delegate his powers or functions to a public officer unless the public officer is suitably qualified or experienced to exercise the power or perform the function.

(4) A delegation of a power or function under this section does not prevent the exercise of the power or performance of the function by the Registrar.

(5) A power or function delegated under this section shall, when exercised or performed by the delegate, be taken to be exercised or performed by the Registrar.

Register of
Investment
Activities
Conducted by
Foreign Investors

✓ 6. (1) There is a Register of Investment Activities Conducted by Foreign Investors.

(2) The Registrar shall keep the Register in any form (including an electronic form) or combination of forms he considers appropriate.

(3) Subject to subsection (4), the Registrar shall record the prescribed information in the Register.

(4) The Registrar shall not record information in the Register in a manner that discloses details of the investments and business operations of a foreign investor that are commercially sensitive.

(5) The Registrar shall make the Register available for inspection by members of the public during the hours his office is open.

(6) A person may, on paying the prescribed fee (if any), obtain a copy of, or extract from, information recorded in the Register.

✓ 7. (1) A foreign investor who conducts an investment activity shall, within 2 months after the end of a financial year -

Annual surveys
by foreign
investors

- (a) complete an annual survey about the conduct of the investment activity in Solomon Islands during the financial year; and
- (b) give a copy of it to the Registrar.

(2) The annual survey shall be in the prescribed form.

✓ 8. (1) The Registrar shall, within 4 months after the end of a financial year -

Annual reporting
by Registrar

- (a) subject to subsection (2), make an annual report on the following:
 - (i) the administration of this Act during the financial year;
 - (ii) the conduct of investment activities by foreign investors in Solomon Islands during the financial year; and
- (b) give a copy of the report to the Minister.

(2) When making the annual report, the Registrar -

- (a) shall consider and take into account the annual surveys he receives under section 7, and
- (b) shall not specify information in the report in a manner that identifies a foreign investor or discloses the details of the investments or business operations of a foreign investor.

(3) The Minister shall, as soon as practicable after receiving the annual report, lay a copy of the report before Parliament.

Reserved list

9. (1) There is a reserved list of investment activities.
- (2) The reserved list shall be set out in the regulations.
- (3) An investment activity shall not be specified in the reserved list -
- (a) unless at least one citizen of Solomon Islands (whether by himself, as a member of a joint venture, as a partner in a partnership, as a trustee or otherwise or by an agent or employee) conducts the investment activity in Solomon Islands;
- (b) unless at least 10 business operations conduct the investment activity in Solomon Islands; and
- (c) if it is carried on as a business or part of a business that produces or supplies goods or services which are used regularly by, or are otherwise important for the operation of, other businesses in Solomon Islands.
- (4) A foreign investor shall not conduct a reserved activity.

see
Minutes
(p.7) - amendments
→
Review of reserved
list

(5) 10. (1) The purpose of reviewing the reserved list shall be to assess whether to reduce the reserved activities specified in it in order to promote a competitive economy in Solomon Islands.

(2) The Registrar shall, at least once in every 2 years, review the reserved list by assessing each investment activity specified in the reserved list and ascertaining whether, in his opinion, it should remain in the reserved list.

(3) In conducting the assessment, the Registrar shall consult with the appropriate departments and agencies of the Government and the Provincial Governments.

(4) At any time, a person may, in writing to the Registrar, recommend a review of the reserved list.

(5) The person shall specify his reasons for recommending the review.

(6) If a person makes a recommendation in accordance with subsections (4) and (5), the Registrar shall consider the recommendation and determine whether or not to conduct a review for the reasons specified in the recommendation.

(7) On concluding a review under this section, the Registrar shall report, in writing, to the Minister on the conduct and outcomes of the review and advise the Minister which reserved activities should, in his opinion, be included in, or omitted from, the reserved list.

(8) Whether or not the Minister amends the reserved list as a result of the review, he shall, as soon as practicable after receiving the Registrar's report, lay a copy of it before Parliament.

prior to making any changes to the Reserved List,

PART 3 - REGISTRATION OF INVESTMENT ACTIVITIES

Division 1 - General matters

11. The purpose of registering an investment activity is to -
- (a) ensure that foreign investors do not conduct reserved activities or prohibited activities; and
 - (b) facilitate the monitoring of the conduct of investment activities by foreign investors.

Purpose of registration

12. (1) This section -
- (a) applies subject to section 15(3) and (4); and
 - (b) shall prevail if there is an inconsistency between this section and any other provision of this Act or between this section and a provision of any other Act.

Requirement for and effect of registration

- (2) The requirement to register investment activities under this Part is -
- (a) in addition to the requirements imposed in respect of investment activities under any other law of Solomon Islands; and
 - (b) the first requirement under the law of Solomon Islands which a foreign investor who intends (whether by himself, as a member of a joint venture, as a partner in a partnership, as a trustee or otherwise) to conduct an investment activity in Solomon Islands shall comply with.

(3) Unless a foreign investor holds a certificate of registration for an investment activity or investment activities he conducts or intends to conduct, the foreign investor shall not, and the law

of Solomon Islands (whether taking effect before or after the commencement of this Act and however expressed) does not apply to, and any authorisation granted or issued under that law does not have effect to, authorise the foreign investor to -

- (a) conduct the investment activity;
- (b) negotiate and enter into any arrangement, agreement or memorandum of understanding relating to the conduct of the investment activity; or
- (c) commence taking steps to comply with the requirements under the law of Solomon Islands (other than this Act) to become authorised to conduct the investment activity.

(4) To avoid doubt, on receiving a certificate of registration, the foreign investor intending to conduct an investment activity specified in the certificate of registration may -

- (a) negotiate and enter into any arrangement, agreement or memorandum of understanding relating to the conduct of the investment activity; and
- (b) commence taking steps to comply with the requirements under the law of Solomon Islands (other than this Act) to become authorised to conduct the investment activity.

Limitations on effect of registration

13. Registration of an investment activity under this Act does not operate to -

- (a) relieve a foreign investor conducting the investment activity from complying with any other law of Solomon Islands; or
- (b) grant or entitle a foreign investor conducting the investment activity to any benefits under any other law of Solomon Islands.

General principles relating to certificates of registration

14. (1) A certificate of registration may be issued for more than one investment activity.

(2) A foreign investor may hold more than one certificate of registration at any one time.

Division 2 - Registration

✓ 15. (1) A foreign investor who intends to conduct an investment activity or investment activities in Solomon Islands shall make an application under subsection (2) before -

Application for
registration

- (a) conducting the investment activity;
- (b) negotiating and entering into any arrangement, agreement or memorandum of understanding relating to the conduct of the investment activity; or
- (c) commencing taking steps to comply with the requirements under the law of Solomon Islands (other than this Act) to become authorised to conduct the investment activity.

(2) The foreign investor referred to in subsection (1) shall apply to the Registrar to register the investment activity or activities.

(3) If a body corporate that is established, registered or incorporated in Solomon Islands and that conducts an investment activity or investment activities (whether by itself, as a member of a joint venture, as a partner in a partnership, as a trustee or otherwise) becomes a foreign investor because of a change in its membership or shareholding which results in a foreign investor being entitled to exercise at least one vote or holding at least one voting share (as the case may be), the body corporate shall make an application under subsection (4).

(4) If, after the change in its membership or shareholding, the body corporate referred to in subsection (3) continues to conduct the investment activity or investment activities it was conducting before the change in its membership or shareholding, the body corporate shall, within 3 months after that change, apply to the Registrar to register the investment activity or investment activities.

✓ 16. (1) An application under section 15(2) or (4) shall -

Form of
application

- (a) be in the prescribed form; and
 - (b) be accompanied by the prescribed fee (if any).
- (2) The application shall -
- (a) specify each investment activity to be registered;
 - (b) specify the name of the foreign investor;
 - (c) specify the postal address of the foreign investor;

- (d) specify the business name or intended business name (if known) under which the foreign investor will conduct each investment activity;
- (e) specify the address of the premises where the foreign investor intends to conduct each investment activity (if known);
- (f) specify the name of the foreign investor's representative in Solomon Islands (if any) and the address for service of notices and other documents on the foreign investor;
- (g) describe the investment and business operations relating to each investment activity the foreign investor is proposing to undertake in Solomon Islands;
- (h) state that the foreign investor is not bankrupt under the law of any country, has not applied to take relief under a law of any country for the relief of bankrupt or insolvent debtors or has not compounded his debts or entered into an arrangement with his creditors in any country;
- (i) state that -
 - (i) the foreign investor has not, within the immediately preceding 15 year period, been convicted of an offence for which the maximum penalty is imprisonment for 12 months or more by a court in any country; and
 - (ii) there are no criminal proceedings pending or being brought against the foreign investor in any country for an offence referred to in subparagraph (i); and
- (j) state that the information contained in the application is true and correct.

Preliminary assessment
of application and
foreign investor

✓ 17. (1) The Registrar shall, as soon as practicable after receiving the application ✓

- ✓ (a) assess the application to determine whether the application specifies all the information required under section 16 and whether the information specified is sufficient for determining the nature of each investment activity specified in the application; and
- (b) carry out ~~investigations~~ and make inquiries regarding the ~~matters specified in section 16(2)(h) and (i).~~

(2) If the Registrar is not satisfied that the application contains the information required under section 16 or that the information contained in the application is sufficient for determining the nature of each investment activity, he may request the foreign investor to provide additional information to complete the application or determine the nature of each investment activity (as the case requires).

(3) The foreign investor shall comply with the request to provide additional information.

(4) The Registrar may request the foreign investor to provide him with the written consents or signed authorities as is necessary for carrying out investigations or making inquiries under subsection (1) ~~(4)~~ ⁽²⁾ ~~(4)~~.

(5) The ~~foreign~~ investor shall comply with the request to provide consents and authorities.

(5) ~~(4)~~ ⁽⁵⁾ ~~(4)~~ The Registrar shall accept the application and issue to the foreign investor a dated receipt for the application

~~(a)~~ on receiving the additional information requested under subsection (2) (if any) and being satisfied that the application is complete and contains sufficient information for determining the nature of each investment activity; and

(b) on being satisfied that -

(i) the foreign investor is not bankrupt under the law of any country, has not applied to take relief under a law or any country for the relief of bankrupt or insolvent debtors or has not compounded his debts or entered into an arrangement with his creditors in any country;

(ii) the foreign investor has not within the immediately preceding 15 year period, been convicted of an offence for which the maximum penalty is imprisonment for 12 months or more by a court in any country; and

(iii) there are no criminal proceedings pending or being brought against the foreign investor in any country for an offence referred to in subparagraph (ii).

18. (1) The Registrar shall, within 5 days after issuing the dated receipt referred to in section 17(6) -

(a) consider the application for the purposes of -

Consideration of
application

see note
(1-1)

- (i) determining the nature of each investment activity specified in the application (including, in particular, whether conducting the investment activity would involve conducting a prohibited activity or a reserved activity); and
 - (ii) deciding whether to register or refuse to register each investment activity; and
- (b) give written notice to the foreign investor that shall state in respect of each investment activity specified in the application -
- (i) that he will register or he refuses to register the investment activity; or
 - (ii) if, within that 5 day period, he has been unable to decide whether to register or refuse to register the investment activity, that he is consulting regarding the nature of the investment activity and will notify the foreign investor of his decision whether to register or to refuse to register the investment activity as soon as practicable.

(2) If the Registrar gives notice under subsection (1)(b)(i), he shall, as soon as practicable after giving the notice and subject to section 20, register the investment activity or refuse to register the investment activity accordingly.

Registrar to consult
about nature of
certain
investment activities

✓ 19. (1) If the Registrar gives notice to the foreign investor under section 18(1)(b)(ii), the Registrar shall, as soon as practicable after giving the notice, request advice from -

- (a) if he unable to decide whether the investment activity is a reserved activity, the Minister; or
- (b) if he is unable to decide whether the investment activity is a prohibited activity, the appropriate officer in a department or other agency of the Government that is responsible for an area of Government business, or administers legislation, that relates to the investment activity.

(2) The Minister or the appropriate officer shall, within 5 working days after receiving the Registrar's request under subsection (1), provide the advice to the Registrar.

(3) The Registrar shall consider the advice given to him under subsection (2) and decide whether to register or refuse to register the investment activity.

(4) After deciding under subsection (3) whether to register or refuse to register the investment activity, the Registrar shall, as soon as practicable -

- (a) give written notice to the foreign investor that he will register or that he refuses to register the investment activity; and
- (b) subject to section 20, register the investment activity or refuse to register the investment activity accordingly.

✓ 20. (1) The Registrar shall register an investment activity specified in an application made under section 15 if it does not involve conducting a prohibited activity or a reserved activity.

Registration of
investment activity

(2) If the Registrar refuses to register an investment activity, the notice to the foreign investor under section 18(1)(b)(i) or 19(4)(a) shall specify his reasons for the refusal and advise the foreign investor of his right of review under section 27.

(3) To register an investment activity, the Registrar shall -

- (a) record the prescribed information relating to the investment activity in the Register; and
- (b) issue to the foreign investor a certificate of registration for the investment activity.

✓ 21. (1) The certificate of registration shall be in the prescribed form.

Form and content of
certificate of registration

- (2) The certificate of registration shall -
- (a) specify the certificate reference number;
 - (b) specify the investment activity or investment activities for which the certificate is issued;
 - (c) specify the name of the foreign investor to whom it is issued;
 - (d) specify the business name (if any) under which the foreign investor conducts each investment activity;
 - (e) specify the address of the premises in Solomon Islands where the foreign investor conducts each investment activity;
 - (f) specify the address for service of notices and other documents on the foreign investor;

Amendment of
registration of
investment activity

- (g) specify the prescribed details (if any); and
- (h) be signed and dated by the Registrar and bear the Registrar's official stamp.

- ✓ 22. (1) Subject to this section, the Registrar may amend -
- (a) an entry in the Register relating to an investment activity; or
 - (b) a certificate of registration issued for an investment activity.

(2) The Registrar may amend the Register or a certificate of registration by correcting any of the following details specified in the Register or on the certificate of registration if he is satisfied that it contains an error:

- (a) the name of the foreign investor conducting the investment activity;
- (b) the business name (if any) under which the foreign investor conducts the investment activity;
- (c) the address of each premises where the foreign investor conducts the investment activity;
- (d) the address for service of notices and other documents on the foreign investor;
- (e) the prescribed details (if any).

(3) Notwithstanding subsection (2), if a foreign investor to whom a certificate of registration has been issued changes any of the following details, he shall, notify the Registrar of the change within 25 days after the change occurs:

- (a) the business name (if any) under which the foreign investor conducts the investment activity;
- (b) the address of a premises where the foreign investor conducts an investment activity;
- (c) the address for service of notices and other documents on the foreign investor;
- (d) the prescribed details (if any).

(4) A foreign investor who fails to notify the Registrar of a change of a detail specified in subsection (3) commits an offence.

Penalty: If the offender is a natural person - \$50,000 of imprisonment for 6 months or both.

If the offender is a body corporate - \$250,000.

(5) The foreign investor's notification under subsection (3) shall be in the prescribed form.

(6) This section does not apply if a foreign investor to whom a certificate of registration has been issued wishes to -

- (a) change details specified in the Register relating to an investment activity for which the certificate of registration was issued, or specified on the certificate of registration, other than the details referred to in subsection (3); or
- (b) conduct an investment activity that is not specified on the certificate of registration.

(7) A foreign investor referred to in subsection (6) shall apply under section 15 for a new certificate of registration.

(8) The regulations may provide for the manner in which the Registrar shall amend certificates of registration.

✓ 23. (1) Subject to this section, the Register may cancel a certificate of registration if the foreign investor to whom it was issued -

Cancellation of
certificate of
registration

- (a) conducts a prohibited activity or a reserved activity;
- (b) has not commenced conducting an investment activity specified on the certificate of registration within 12 months after he received the certificate of registration;
- (c) applies in accordance with section 22(7) for a new certificate of registration to replace the certificate of registration and the Registrar issues a new certificate of registration to the foreign investor;
- (d) obtained the certificate by fraud, misrepresentation, misstatement or omission of a material particular;
- (e) has committed an offence against this Act or any other law of Solomon Islands relating to an investment activity specified on the certificate of registration for which the maximum penalty is imprisonment for 12 months or more; or

(Cap 58)

- (f) has been deported from Solomon Islands under the Deportation Act.
- (2) The Registrar shall not cancel the certificate of registration unless -
- (a) he is satisfied that there are grounds under subsection (1) for cancelling the certificate;
 - (b) he has requested the foreign investor to show cause why his certificate should not be cancelled and given him not less than 10 days to respond to the request;
 - (c) the foreign investor's response (if any) has not satisfied the Registrar that he should not cancel the certificate; and
 - (d) he has consulted the Minister about his intention to cancel the certificate.
- (3) If, after complying with subsection (2), the Registrar remains satisfied that there are grounds for cancelling the certificate of registration, he shall, by notice in writing to the foreign investor, cancel the certificate.
- (4) The Registrar shall specify in the notice his reasons for cancelling the certificate and advise the foreign investor of his right of review under section 27.

Effect of cancellation
of certificate of
registration

- ✓ 24. (1) On the cancellation of a certificate of registration -
- (a) the investment activity or investment activities for which the certificate was issued is or are no longer registered under this Act; and
 - (b) the foreign investor to whom the certificate was issued is no longer authorized under the law of Solomon Islands to conduct the investment activity and shall cease conducting the investment activity or investment activities for which it was issued.
- (2) If there is an inconsistency between subsection (1) and any other provision of this Act or between subsection (1) and a provision of any other Act, subsection (1) shall prevail.

PART 4 - INVESTMENT FACILITATION COMMITTEE

Establishment and
functions of
Committee

- ✓ 25. (1) There is an Investment Facilitation Committee.
- (2) The functions of the Committee are -

- (a) to facilitate foreign investors who hold certificates of registration, conduct their investment in Solomon Islands; and *^ qg ukq qn r(ouq) r m v q) a, b*
- (b) to review, under section 27, decisions of the Registrar to refuse to register an investment activity or to cancel a certificate of registration.

✓26. (1) The Minister shall make regulations, not inconsistent with this Act, that -

Regulations to prescribe membership, actions and procedures etc. of Committee

- (a) prescribe the membership of the Committee;
 - (b) prescribe the manner in which the Committee shall give assistance to foreign investors to whom a certificate of registration has been issued to facilitate the conduct of their investments in Solomon Islands; and
 - (c) provide for the procedures of the Committee.
- (2) A regulation referred to in subsection (1) may -
- (a) authorise the Committee to determine its own procedures;
 - (b) provide for the making of applications to the Committee; and
 - (c) authorise the Committee or a member of the Committee to exercise a discretion for the purpose of carrying out the Committee's functions.

✓27. (1) If the Registrar refuses to register an investment activity under section 18 or 19 or cancels a certificate of registration under section 23, the foreign investor whose application for registration of an investment activity or investment activities is refused or whose certificate of registration is cancelled may, subject to this section, apply to the Committee to review the Registrar's decision.

Review of certain decisions of Registrar by Committee

(2) The foreign investor shall apply to the Committee for review of the decision within one month after receiving the notice refusing to register an investment activity or investment activities or cancelling the certificate of registration.

- (3) The application for review shall -
- (a) be in accordance with the prescribed form; and
 - (b) be accompanied by the prescribed fee (if any).

(4) The Committee shall, within 2 months after receiving the application for the review, conduct and determine the review.

- (5) In conducting the review, the Committee shall -
- (a) act fairly and expeditiously; and
 - (b) give proper consideration to the issues.
- (6) In determining the review, the Committee shall, by notice in writing to the applicant -
- (a) affirm the decision appealed; or
 - (b) revoked the decision appealed and substitute for that decision another decision that the Registrar may make under section 18, 19 or 23 of this Act (as the case requires) regarding the subject matter of the decision appealed.
- (7) The Committee shall specify the reasons for its decision in the notice.
- (8) If the Committee substitutes another decision for the decision appealed, the substituted decision has effect, and shall be complied with, as if it were the decision made by the Registrar.
- (9) The Registrar or foreign investor may appeal against the Committee's decision to the High Court on an error of law.

PART 5 - APPLICATION OF INTERNATIONAL AGREEMENTS

Disputes

✓ **28.** (1) The law of Solomon Islands applies to disputes involving foreign investors who conduct investment activities.

(2) A dispute involving a foreign investor who conducts an investment activity shall be dealt with under the law of Solomon Islands as if it were a dispute involving a citizen of Solomon Islands.

(3) To the extent that the Convention of Settlement of Investment Disputes (which was signed by Solomon Islands in Washington on 12 November 1979 and acceded to by Solomon Islands on 8 October 1981) is not inconsistent with the law of Solomon Islands, it applies to, and shall be complied with by, foreign investors who conduct investment activities as a law of Solomon Islands.

Effect of
guarantees
contained in APEC
non-binding
investment
principles

✓ **29.** (1) The 3 guarantees contained in the APEC non-binding investment principles (which have been endorsed by Solomon Islands and the other Pacific Island Forum countries) are set out in the Schedule.

(2) In the Schedule -

“member economies” includes Solomon Islands.

(3) The law of Solomon Islands shall, in relation to foreign investors who conduct investment activities, be administered in a manner that promotes the guarantees.

PART 6 - MISCELLANEOUS

✓ 30. A document that is required under this Act to be given to or lodged with the person may be given to or lodged with the person personally or by registered mail.

Giving or lodging notices and applications etc.

✓ 31. If the Registrar is satisfied that a certificate of registration that was issued to a foreign investor is lost or destroyed, the Registrar shall issue a duplicate of the certificate of registration to the foreign investor.

Issue of duplicate certificate of registration

✓ 32. A person commits an offence if the person knowingly makes a statement that is false and misleading in a material particular -

Offence of providing false or misleading statements

(a) in connection with an application, report, record, form, certificate or other document made, filled in or kept under this Act; or

(b) otherwise in connection with the operation of this Act.

Penalty: If the offender is a natural person - \$100,000 or imprisonment for 12 months or both.

If the offender is a body corporate - \$500,000.

✓ 33. (1) A person who, in the course of the administration of this Act, acquires information about another person's affairs or has custody of or access to a document containing information about another person's affairs, commits an offence if the person -

Offence to disclose or improperly use information

(a) conceals a record of, or a copy of a record of, the information;

(b) shows or gives the record of, or a copy of the record of, the information to another person;

(c) makes available anything from which, by electronic process or otherwise, the information may be obtained by another person;

(d) communicates in any other manner, the information to another person; or

- (e) improperly uses the information to gain, whether directly or indirectly, an advantage for himself or another person to the detriment of the person to whom the information relates.

Penalty: \$200,000 or imprisonment for 2 years or both.

(2) Subsection (1) does not apply if the person does an act specified in that subsection because of any of the following reasons:

- (a) he is required to do so for the purposes of this Act or another Act;
- (b) he is required to do so for the purposes of an investigation or prosecution of an offence against this Act;
- (c) he does so with the consent of the person to whom the information relates.

Protection from liability

✓ 34. (1) A person who is or was the Minister or the Registrar is not civilly or criminally liable for an act done, or omitted to be done, by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

(2) Subsection (1) does not affect any liability that the Government would, apart from that subsection, have for the act or omission.

Compensation for acquisition of property

✓ 35. (1) Subject to this section, if, because of the application of a provision of or under this Act, ~~(a person is no longer authorized to conduct an investment activity because the investment activity has become a reserved activity or)~~ a person's interest in or right over property is compulsorily acquired, the person is entitled to be paid reasonable compensation.

(2) A person referred to in subsection (1) may apply to the High Court to determine -

- (a) whether compensation is payable to him;
- (b) the amount of compensation that should be payable to him;
- (c) the reasonableness of the compensation that has been or is intended to be paid to him (if any); and
- (d) the period of time within which the compensation shall be paid to him.

Regulations

✓ 36. (1) The Minister may make regulations, not inconsistent with this Act, prescribing matters that are -

- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for -
- (a) the forms to be used in connection with this Act;
 - (b) the fees payable under this Act;
 - (c) notification of the Minister by the Registrar of investment activities recorded in the Register; or
 - (d) penalties for offences against the regulations not exceeding, if the offender is a natural person, \$20,000 or, if the offender is a body corporate, \$100,000.

PART 7 - REPEAL AND SAVINGS AND TRANSITIONAL PROVISIONS

37. In this Part -

Definitions

“approval” means approval by the Investment Board under the repealed Act;

“certificate of approval” means a certificate of approval granted under the repealed Act;

“foreign investment” means a foreign investment within the meaning of the repealed Act that was authorized by a certificate of approval;

“incentives” has the same meaning as in the repealed Act;

“Investment Board” means the Investment Board established under section 3 of the repealed Act;

“investor” means a person investing or intending to invest in Solomon Islands (whether by himself, as a member of a joint venture, as a partner in a partnership, as a trustee or otherwise) who or which is -

- (a) a natural person whether a citizen of Solomon Islands or another country;
- (b) a body corporate which is established, registered or incorporated in Solomon Islands or outside Solomon Islands;

“repealed Act” means the Investment Act repealed by section 38.

Repeal (Cap 142)

✓ 38. The Investment Act is repealed.

References to repealed Act etc.: foreign investors conducting investment activities

✓ 39. (1) On and after the commencement of this Act, a reference in an Act, subsidiary legislation, an agreement, contract or authority or any other document made, granted, issued, entered into or otherwise having effect before that commencement to the requirement of applying for, or being granted, approval of a foreign investment under the repealed Act shall, in relation to a foreign investment involving the conduct of an activity or activities which is or are an investment activity or investment activities, be taken to be, and shall have effect as if it were, a reference to the requirement under this Act to apply to register, or be issued with and hold a certificate of registration for, the investment activity or investment activities.

(2) For the purposes of subsection (1), a reference to -

- (a) the repealed Act shall be taken to be, and shall have effect as if it were, a reference to this Act;
- (b) the Investment Board shall be taken to be, and shall have effect as if it were, a reference to the Registrar; and
- (c) approval or a certificate of approval shall be taken to be, and shall have effect as if it were, a reference to registration or a certificate of registration.

References to repealed Act etc.: other investors and technology and external agreements etc.

✓ 40. (1) To avoid doubt, on and after the commencement of this Act, a reference in an Act, subsidiary legislation, an agreement, contract or authority or any other document made, granted, issued, entered into or otherwise having effect before that commencement to the requirement of applying for, or being granted, approval of an investment under the repealed Act shall have no effect in relation to -

- (a) an investment that is or will be conducted in Solomon Islands by an investor who is not a foreign investor within the meaning of section 2 of this Act; or
- (b) a foreign investment involving the conduct of an activity or activities which is not an investment activity or are not investment activities.

(2) To avoid doubt, on and from the commencement of this Act, a reference in an Act, subsidiary legislation, an agreement, contract or authority or any other document made, granted, issued, entered into or otherwise having effect before that commencement to the requirement for approval under the repealed Act of a technology or external agreement or any other agreement or arrangement has no effect.

✓ 41. (1) This section applies subject to section 42.

Transitional:
requirement to
apply for
certificate of
registration

(2) If, immediately before the commencement of this Act, a foreign investor carried on a foreign investment involving the conduct of an activity or activities which is or are under this Act an investment activity or investment activities, the foreign investor may, on and after that commencement, continue to carry on that foreign investment until the first of the following events occurs:

- (a) the expiry of 12 months after the commencement of this Act;
 - (b) the registration of each investment activity involved in the conduct of the foreign investment.
- (3) In this section -

“foreign investor” has the same meaning as in the repealed Act.

✓ 42. (1) This section applies notwithstanding any provision of this Act to the contrary.

Savings: reserved
activities

(2) If, immediately before the commencement of this Act, a foreign investor carried on a foreign investment involving the conduct of an activity which is under this Act a reserved activity, the foreign investor may, on and after that commencement, continue to carry on that activity as if it were not a reserved activity, but only for as long as he continues to operate the enterprise that comprises the foreign investment as authorized under the repealed Act.

(3) For the purposes of subsection (2), this Act applies, and has effect, in relation to the activity referred to in that subsection as if it were not a reserved activity.

(4) In this section -

“foreign investor” has the same meaning as in the repealed Act.

Savings:
entitlement to
incentives and
exemptions for
foreign investors
and other
investors
(Cap 123)
(Cap 121)

✓ 43. (1) Subject to subsections (2) and (3), if, immediately before the commencement of this Act, an investor was entitled to receive incentives under the Income Tax Act, the Customs and Excise Act or any other relevant or qualifying Act in respect of an investment or undertaking, the investor continues, on and after that commencement, to be entitled to receive those incentives.

(2) On the expiry of the period for which an investor referred to in subsection (1) was granted the incentives, the investor is not entitled to apply for, or be granted, an extension to that period.

(3) If a foreign investor referred to in section 41(2) fails to register each investment activity referred to in that subsection before the expiry of 12 months after the commencement of this Act, his entitlement to receive incentives under subsection (1) (if any) ceases on the expiry of that 12 month period.

✓ SCHEDULE

Section 29

GUARANTEES

1. Member economies will not expropriate foreign investments or take measures that will have a similar effect, except for a public purpose and on a non-discriminatory basis, in accordance with the laws of each economy and principles of international law, and against the prompt payment of adequate and effective compensation.
2. Member economies will extend to investors from any economy treatment in relation to the establishment, expansion and operation of their investments that is no less favourable than that accorded to investors from any other economy in like situations, without prejudice to relevant international obligations and principles.
3. Member economies will further liberalize towards the goals of free and prompt transfer of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidations, in freely convertible currency.

FOREIGN INVESTMENT BILL 2005

Object and reasons

The Foreign Investment Bill 2005 repeals the Investment Act (Cap 142) and replaces the system of approvals granted by the Investment Board under that Act by a simple system of registration to be complied with by foreign investors who intend to carry out certain business activities (which are defined as "investment activities" in the Bill) in Solomon Islands. The foreign investors are required to register investment activities under the Bill before they can take any other action for the purpose of conducting or becoming authorized to conduct the investment activities in Solomon Islands. If a foreign investor does not register an investment activity under the Bill he may not conduct the investment activity in Solomon Islands.

The registration system is automatic and non-discretionary and will reduce uncertainty. It also provides a mechanism for screening for bankrupt or insolvent investors and those who have been convicted within the immediately preceding 15 year period of, or against whom there are criminal proceedings for, offences, for which the maximum penalty is 12 months or more. These checks are in addition to those done by immigration authorities.

Investment activities that are not reserved activities or prohibited activities are automatically registered. If a foreign investor applies to conduct an investment activity that is not a reserved activity or a prohibited activity, the Registrar records details of the activity in the Register of Investment Activities Conducted by Foreign Investors and issues him with a certificate of registration for the investment activity. After registration, a foreign investor will not be treated any differently to domestic investors.

A reserved activity is an activity that is reserved to be conducted by citizens of Solomon Islands only. The regulations made under the Bill prescribe which activities are reserved activities. A prohibited activity is an activity that is prohibited by the law of Solomon Islands.

The Bill also -

- (a) sets out the factors for determining which activities are reserved activities;
- (b) provides for review of the reserved list for the purposes of assessing which investment activities should be omitted from or included on it;
- (c) requires foreign investors who conduct investment activities in Solomon Islands to complete an annual survey about the conduct of the investment activities;

- (d) requires the Registrar to make an annual report about the administration of the Bill and the conduct of investment activities by foreign investors in Solomon Islands;
- (e) provides for the amendment and cancellation of a certification of registration;
- (f) establishes the Investment Facilitation Committee whose functions are to provide assistance to foreign investors who will conduct investment activities to facilitate the conduct of their investments in Solomon Islands and to review decisions of the Registrar to refuse to register an investment activity or to cancel a certificate of registration.



Minister for Commerce, Industries and Employment





Honiara, Solomon Islands
Printed under the authority of the
Solomon Islands Government

Printed by Solomon Islands Printers Ltd.