



FOREIGN INVESTMENT ACT 1984

NO. 10 OF 1984



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passed by the National Parliament this twelveth day of June 1984.

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 twenty-second day of June 1984.

*B Devesi
Governor-General*

Date of commencement: see section 1.

AN ACT to promote and regulate foreign investment and matters connected therewith.

ENACTED by the National Parliament of Solomon Islands.

ARRANGEMENT OF SECTIONS

SECTION

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1. This Act may be cited as the Foreign Investment Act 1984, and shall come into operation on such date as the Minister may by order appoint.

Short title.

2. In this Act, unless the context otherwise requires -

Inter-pretation.

“approved” in relation to any foreign investment, technology agreement, enterprise, activity, percentage or period means approval granted in terms of the certificate issued under section 6 of this Act,

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

“Division” or “Foreign Investment Division” means the Foreign Investment Division in the National Planning Office or such other department or agency of the Government for the time being dealing with foreign investment in Solomon Islands,

“enterprise” means any industrial, commercial, business or service undertaking;

“foreign investor” means a person who is not a citizen of Solomon Islands and includes -

(a) a body corporate or any other form of 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 form of business organisation not established in Solomon Islands;

“foreign investment” means investment by a foreign investor in the form of foreign currency or tangible assets actually transferred to Solomon Islands and includes retained earnings arising from such investment;

“Minister” means the Minister for the time being responsible for foreign investment in Solomon Islands;

“technology agreement” means an agreement involving payments in foreign currency for:

(a) licensing of foreign owned patents, trademarks, know-how or any other industrial property rights;

(b) foreign technical, management and marketing services:

Provided that an agreement for construction or consultancy services whose duration does not exceed three years shall not be regarded as a technology agreement for the purpose of this Act.

Investment
Board and
its
Secretariat.

3. (1) There shall be an Investment Board with the following functions -

- (a) to approve foreign investments and technology agreements in terms of this Act;
- (b) to monitor and enforce compliance with the terms and conditions of any approval granted under this Act;
- (c) to review and advise the Government on policies and procedures relating to the promotion and regulation of foreign investment and matters connected therewith;
- (d) to undertake such other matters as may be required by the Government.

(2) The Board shall consist of the Minister as Chairman and such other members, being not less than four nor more than six appointed by the Minister, with the approval of the Cabinet, from among any of the following -

- (a) Ministers or senior officials of the Government, and
- (b) chief executives or senior officials of any statutory body or Government-owned institution or body,

whose functions are related to any of the following, that is to say, economic planning, finance, banking, industrial or commercial development, agriculture, fisheries or natural resources:

Provided that, in addition, the Minister shall invite to sit as a member of the Board when it considers a particular enterprise, if such enterprise directly concerns a Ministry or agency of the Government not represented on the Board, either the Minister or the official in charge of such Ministry or agency.

(3) The Board shall meet when the Chairman requires but in any event not less than once every three months. The Board shall regulate its own proceedings.

(4) The Foreign Investment Division shall act as the Secretariat of the Board. The Chief Officer of the Division shall be the Secretary of the Board and shall maintain a record of its proceedings.

4. An application for a foreign investment or technology agreement shall be made to the Division for the approval of the Board in respect of -

- (a) a proposed foreign investment;
- (b) a proposed technology agreement;
- (c) a proposed reinvestment of retained earnings:

Provided that the Minister may, with the approval of the Cabinet, by notification published in the Gazette, exempt any

Application
for
investment,
etc.

class or category of foreign investment or technology agreement from the provisions of this Act, or any part thereof, subject to such terms and conditions as may be contained in the said notification.

5. In approving an application under section 4, the Board shall satisfy itself that -

Criteria for approving applications.

- (a) the foreign investment would further the economic development of, or be of benefit to, Solomon Islands,
- (b) 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) local raw materials and supplies would be used as far as practicable; and
- (d) the terms and conditions of technology agreements are reasonable.

6. In the event that an application is approved by the Board, the Division shall grant a certificate of approval which shall set out the terms and conditions of approval in such form as the Board may determine and shall specify -

Certificate of approval.

- (a) the name, description and location of the enterprise,
- (b) the full particulars of the foreign investor;
- (c) the approved activity and, where appropriate, the approved capacity of the enterprise;
- (d) the maximum and minimum total capital investment and the approved percentage of foreign investment in the equity or ownership in the capital of the enterprise;
- (e) in the case of foreign investment in the form of tangible assets other than foreign currency, the value of such assets as approved by the Board,
- (f) the period within which the foreign investment is to be made,
- (g) particulars of any technology agreement, its duration and payments to be made thereunder;
- (h) exemption or reduction, if any, from income and corporate tax and such other taxes and duties as may be applicable;
- (i) obligations, if any, to be fulfilled by the enterprise;
- (j) such other matters as may be necessary or desirable.

Existing
enterprise
having
foreign
investment.

7. (1) Where foreign investment has been made in an enterprise before the commencement of this Act, in respect of which a certificate of registration has been issued under the Foreign Investment Act 1979 and Regulations thereunder, or which has been approved by the Government (including for the purposes of this section the government of the British Solomon Islands Protectorate), such enterprise shall give notice to the Division in the prescribed form, accompanied by a certified copy of such certificate of registration or of the approval or such documents that may be deemed to have conveyed such approval, within 90 days of the coming into operation of this Act.

(2) Where the Board is satisfied that such an enterprise has been registered or approved or such approval was conveyed as aforesaid, and, in particular, in relation to the activities of such enterprise, the Board shall direct the Division to grant a certificate of approval in terms of section 6 to the enterprise as a whole or in relation to the particular activities on payment of the fee prescribed.

(3) Where foreign investment has been made before the commencement of this Act -

(a) without registration or approval as referred to in subsection (1), or

(b) the Board is not satisfied under subsection (2) and decides not to grant a certificate of approval,

in respect of an enterprise as a whole or in relation to any of its activities, such enterprise shall make an application under section 4 for approval of the foreign investment or in respect of such activities (as if it were for a new proposed foreign investment, or by an approved enterprise in respect of any acquisition or diversification as referred to in section 10(a) and (c)), as the case may be, and the procedures under sections 5 and 6 and the Regulations made under this Act shall follow. Such an application shall be made within 90 days of the coming into operation of this Act, or, if notice is given under subsection (1), within 30 days of the Division communicating the decision of the Board to the enterprise. If such an application is not made under section 4 within the time prescribed or, if an application is made under section 4 as aforesaid, upon the Division informing the applicant in writing that the Board has rejected the application, any continuation of the foreign investment in such enterprise or in relation thereto as aforesaid for which a certificate of approval has not been granted in terms of section 6, shall be deemed a foreign investment made in contravention of this Act.

(4) Where a technology agreement has been concluded before the commencement of this Act, the enterprise which is to pay the foreign party in terms of the technology agreement shall submit a certified copy of the technology agreement to the Division within 90 days of the coming into operation of this Act.

8. 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 section 6 shall be deemed to have been terminated.

Investment
within
approved
period.

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

Register of
foreign
investments.

10. An approved enterprise shall not, without applying for approval of the Board under section 4 -

Restrictions
on approved
enterprises.

- (a) acquire any interest in or take over any other enterprise;
- (b) increase its approved percentage of foreign investment;
- (c) diversify into other activities; or
- (d) alter the terms of any approved technology agreement.

11. A foreign investor shall be entitled, in respect of an approved foreign investment and technology agreement, to transfer out of Solomon Islands in foreign currency at the prevailing official rate of exchange and after payment of taxes, if any -

Investment
guarantees.

- (a) the proceeds of sale of all or any part of his approved foreign investment;
- (b) the dividends and profits from his approved foreign investment;
- (c) payments under approved technology agreements; and
- (d) compensation received for any property compulsorily acquired or expropriated under section 12:

Provided that in the event the Government, in consultation with the Central Bank of Solomon Islands, determines that a situation of extreme balance of payments difficulties exists, foreign currency shall be made available in such instalments as may be determined by the Central Bank of Solomon Islands.

Compulsory acquisition of approved foreign investment, etc.

12. (1) No approved foreign investment, approved enterprise or any property belonging thereto and no right or interest therein shall be compulsorily acquired except -

- (a) when the conditions specified in section 8(1)(a) and (b) of the Constitution are satisfied; and
- (b) upon payment of reasonable compensation within a reasonable period of time as required by section 8(1)(c)(i) of the Constitution.

(2) Where such acquisition as is specified in subsection (1) is made, the person having an interest in or right over the subject matter of such acquisition, shall have the rights guaranteed under section 8(1)(c)(ii) of the Constitution.

Penalties.

13. (1) Where any person or enterprise makes a foreign investment or concludes a technology agreement in contravention of the provisions of this Act or Regulations made or directions given thereunder, or fails to comply with the provisions of section 7 or the provisions of any certificate of approval granted under section 6, the Board may direct the Division to -

- (a) order disinvestment on terms specified by the Board, including, if necessary, sale by public auction, in which case the provisions of section 12 shall not apply;
- (b) terminate the certificate concerned or suspend for such period as the Board thinks fit any or all of its provisions;
- (c) prohibit or suspend the transfer abroad of any monies under section 11.

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

(3) The Board shall give due consideration to such representation and any action taken under subsection (1) shall be reasonable, taking into account the nature of the contravention or non-compliance.

(4) Without prejudice to any action under subsection (1), such person or enterprise may be liable to a fine not exceeding \$10,000 and a fine not exceeding \$100 for every day the contravention or non-compliance continues;

Provided that no prosecution hereunder shall be commenced without the consent of the Director of Public Prosecutions.

(5) Where such contravention or non-compliance is committed by a body corporate, every director, manager or other person in charge of or responsible for the conduct of its business shall be liable to the aforesaid penalties:

Provided that such director, manager or other person shall not be so liable if he proves that the contravention or non-compliance was committed without his knowledge or that he exercised all due diligence to prevent its commission.

14. Any dispute, controversy or claim arising, out of or relating to a certificate granted under section 6, or the breach or termination thereof, which cannot be settled between the Board and the foreign investor shall, unless otherwise agreed, be determined by the High Court.

Disputes.

15. The Minister may, on the advice of the Board, by order delegate to the Division such functions of the Board under this Act as may be deemed appropriate, including the approval of any class or category of applications under section 4, on such conditions and within such financial limits as may be contained in the said order.

Delegation
by Board.

16. Fees for applications, certificates and related matters shall be paid in accordance with the Schedule to this Act.

Fees.

17. (1) The Minister may, in consultation with the Board, make Regulations for the purpose 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 -

Regulations,
directions
and
information.

- (a) to specify the sectors and activities open and closed to foreign investment;
- (b) to specify the general terms and conditions for foreign investment;
- (c) to prescribe procedures and forms for applications, notices, certificates and amendments thereto, representations, progress and other reports, and any other matters, whether or not specified to be prescribed, under this Act;
- (d) to prescribe charges for anything required to be done by the Board or the Division;
- (e) to prescribe procedures for the functioning of the Division as the Secretariat of the Board.

(2) Regulations under subsection (1) may make different provisions for different classes or categories of foreign investments or technology agreements.

(3) The Board may issue guidelines or directions for carrying out the provisions of this Act or Regulations made thereunder.

(4) For the implementation of and proper compliance with the provisions of this Act, the Regulations made thereunder or the provisions of a certificate of approval granted under section 6, the Division may call for any relevant information or explanation and, upon giving reasonable notice, carry out any inspection of an approved enterprise or its relevant records.

Act to
be
supplementary.

18. The provision of this Act shall be supplementary to, but not in derogation of any other law applicable to a foreign investor, foreign investment or his enterprise, and the compliance by a person of the provisions of this Act shall not absolve him from his obligation to comply with the provisions of that other law.

Repeal.

19. The Foreign Investment Act 1979 (Act No. 13 of 1979) and the Regulations made thereunder are repealed from the date this Act comes into operation.

SCHEDULE
(Under section 16)

Fees shall be paid as prescribed below in respect of the following -

	Amount in \$
1. Any application under section 4 or in respect of matters referred to under section 10	100
2. The granting of a certificate of approval under section 6 in respect of foreign investment	1000
3. The granting of a certificate of approval under section 6 in respect of foreign investment and a technology agreement made in a single application	1200
4. The granting of a certificate of approval under section 6 in respect of any matters other than those at 2 and 3 above, including the amendment of a certificate of approval	500
5. With any notice required to be given under subsection (1) of section 7 or certified copy to be submitted under subsection (4) of section 7	100

