

# REPRINT

## FOREIGN INVESTMENT ACT 2005

**As in force at: 10 June 2010**

**STATUS: HISTORICAL**

This version is that in force at the date stated above. It does not include amendments made since that date.

For list of amendments see Endnotes

**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.**

# FOREIGN INVESTMENT ACT 2005

## Table of provisions

<b>PART 1</b>	<b>PRELIMINARY.....</b>	<b>1</b>
1	Short title and commencement	1
2	Interpretation	1
<b>PART 2</b>	<b>ADMINISTRATION.....</b>	<b>2</b>
3	Registrar of Foreign Investment	2
4	Functions and powers of Registrar	3
5	Delegation by Registrar	3
6	Register of Investment Activities Conducted by Foreign Investors	4
7	Annual surveys by foreign investors	4
8	Annual reporting by Registrar	5
9	Reserved list	5
10	Review of reserved list	6
<b>PART 3</b>	<b>REGISTRATION OF INVESTMENT ACTIVITIES.....</b>	<b>7</b>
<b>Division 1</b>	<b>General matters</b>	<b>7</b>
11	Purpose of registration	7
12	Requirement for and effect of registration	7
13	Limitations on effect of registration	8
14	General principles relating to certificates of registration	9
<b>Division 2</b>	<b>Registration</b>	<b>9</b>
15	Application for registration	9
16	Form of application	10
17	Preliminary assessment of application and foreign investor	11
18	Consideration of application	12
19	Registrar to consult about nature of certain investment activities	12
20	Registration of investment activity	13
21	Form and content of certificate of registration	14

22	Amendment of registration of investment activity	14
23	Cancellation of certificate of registration	16
24	Effect of cancellation of certificate of registration	17
<b>PART 4</b>	<b>INVESTMENT FACILITATION COMMITTEE</b>	
	.....	<b>17</b>
25	Establishment and functions of Committee	17
26	Regulations to prescribe membership, actions and procedures etc. of Committee	18
27	Review of certain decisions of Registrar by Committee	18
<b>PART 5</b>	<b>APPLICATION OF INTERNATIONAL</b>	
	<b>AGREEMENTS.....</b>	<b>20</b>
28	Disputes	20
29	Effect of guarantees contained in APEC non-binding investment principles	20
<b>PART 5A</b>	<b>ADMINISTRATIVE PENALTIES AND</b>	
	<b>COMPOUNDING OF VIOLATIONS AND</b>	
	<b>OFFENCES.....</b>	<b>20</b>
29A	Purpose of this Part	20
29B	Violation	21
29C	Administrative penalties	22
29D	Matters to be taken into account	22
29E	Vicarious liability	23
29F	Time limit	23
29G	Proceedings for violation and offences	23
29H	Compounding of violation or offences	23
<b>PART 6</b>	<b>MISCELLANEOUS.....</b>	<b>25</b>
30	Giving of lodging notices and application etc.	25
31	Issue of duplicate certificate of registration	25
32	Offence of providing false or misleading statement	25
33	Offence to disclose or improperly use information	25
34	Exemption of liability	26
35	Compensation for acquisition of property	27
36	Regulations	27

<b>PART 7</b>	<b>REPEAL AND SAVINGS AND TRANSITIONAL PROVISIONS.....</b>	<b>28</b>
37	Definitions	28
38	Repeal (Cap 142)	28
39	References to repealed Act etc.: foreign investors conducting investment activities	28
40	References to repealed Act etc.: other investors and technology and external agreements etc.	29
41	Transitional: required to apply for certificate of registration	30
42	Savings: reserved activities	30
43	Savings: entitlements to incentives and exemptions for foreign investors and other investors (Cap 123) (Cap 121)	31
<b>SCHEDULE</b>		<b>32</b>

# FOREIGN INVESTMENT ACT 2005

As in force at: 10 June 2010

## PART 1 PRELIMINARY

### 1 Short title and commencement

- (1) This Act may be cited as the *Foreign Investment Act 2005*.
- (2) This Act is deemed to have commenced on 26 June 2006.

### 2 Interpretation

- (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            Registrar of Foreign Investment**

- (1) There is a 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 Functions and powers of Registrar**

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

#### **5 Delegation by Registrar**

- (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.

## **6 Register of Investment Activities Conducted by Foreign Investors**

- (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 Annual surveys by foreign investors**

- (1) A foreign investor who conducts an investment activity shall, within 2 months after the end of a financial year:
  - (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 Annual reporting by Registrar**

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

## **9 Reserved list**

- (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 unless a foreign investor has obtained a Certificate of Registration under this Act which authorised such foreign investor to conduct an investment activity no aspect of which was reserved at the time the Certificate of Registration was granted.
- (5) A foreign investor whom subsection 9(4)(a) applies shall be able to continue to conduct all aspects of the investment activity notwithstanding that any aspect of the investor's approved investment activity may later be added to the reserved list.

## **10 Review of reserved list**

- (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) The Minister shall seek Cabinet approval prior to making any changes to the reserve list.

## **PART 3                    REGISTRATION OF INVESTMENT ACTIVITIES**

### **Division 1                General matters**

#### **11                    Purpose of registration**

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.

#### **12                    Requirement for and effect of registration**

- (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.
- (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.

### **13 Limitations on effect of registration**

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.

## **14 General principles relating to certificates of registration**

- (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 anyone time.

## **Division 2 Registration**

### **15 Application for registration**

- (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:
  - (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 Form of application**

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

## **17 Preliminary assessment of application and foreign investor**

- (1) The Registrar shall, as soon as practicable after receiving the application 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.
- (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.
- (5) The Registrar shall accept the application and issue to the foreign investor a dated receipt for the application - 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.

## **18 Consideration of application**

- (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:
    - (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.

## **19 Registrar to consult about nature of certain investment activities**

- (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 Registration of investment activity**

- (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.
- (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 Form and content of certificate of registration**

- (1) The certificate of registration shall be in the prescribed form.
- (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;
  - (g) specify the prescribed details (if any); and
  - (h) be signed and dated by the Registrar and bear the Registrar's official stamp.

## **22 Amendment of registration of investment activity**

- (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 - 75,000 penalty units of imprisonment for 6 months or both.
- If the offender is a body corporate - 400,000 penalty units.
- (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 Cancellation of certificate of registration**

- (1) Subject to this section, the Registrar may cancel a certificate of registration if the foreign investor to whom it was issued:
  - (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
  - (f) has been deported from Solomon Islands under the (Cap 58) *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.

## **24 Effect of cancellation of certificate of registration**

- (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 authorised 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**

### **25 Establishment and functions of Committee**

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

- (a) to facilitate foreign investors who hold certificates of registration, as well as domestic investors to conduct their investment in Solomon Islands; and
- (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 Regulations to prescribe membership, actions and procedures etc. of Committee**

- (1) The Minister shall make regulations, not inconsistent with this Act, that:
  - (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 Review of certain decisions of Registrar by Committee**

- (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.
- (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**

### **28                    Disputes**

- (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.

### **29                    Effect of guarantees contained in APEC non-binding investment principles**

- (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 5A                    ADMINISTRATIVE PENALTIES AND COMPOUNDING OF VIOLATIONS AND OFFENCES**

### **29A                    Purpose of this Part**

The purpose of administrative penalty provisions in this Part is to promote compliance with this Act and not to punish.



## **29B      Violation**

- (1) Without limiting any provision creating an offence in this Act and in any of its regulations, any contravention of or failure to comply with a provision of this Act, or its regulation, is a violation for the purposes of this Part.
- (2) If the Registrar has reasonable grounds to believe that a person has committed a violation, the Registrar may issue, and shall cause to be served on the person, a written notice of violation.
- (3) The notice of violation must name the person believed to have committed the violation, identify the violation and the potential administrative penalty payable for it, and provide a period during which the person may make written representations to the Registrar.
- (4) The person served with a notice under subsection (2) may make representations in writing to the Registrar in response to the notice of violation.
- (5) The Registrar shall, after considering any representations made under subsection (4) and any other information considered relevant, determine on the balance of probabilities whether the person committed the violation.
- (6) If the Registrar determines that the person committed the violation, the Registrar may take any of the following actions:
  - (a) require the person to cease the violation and comply with the relevant provision at such time and subject to such conditions as the Registrar may require;
  - (b) require the person to publish in a newspaper having wide circulation in Solomon Islands an acknowledgement and apology for its actions in such form and at such times as the Registrar may require;
  - (c) require the person to provide periodic reports to the Registrar to assist the Registrar in monitoring compliance with this Act and its regulations;
  - (d) impose the administrative penalty referred to in the notice, a

lesser penalty or no penalty.

- (7) A person who is dissatisfied with a determination made under subsection (5) or an action taken under subsection (6) may apply to the Committee for a review of the determination or action pursuant to section 27, subject to necessary modifications of that section to facilitate the review under this subsection.

## **29C Administrative penalties**

- (1) The person who commits a violation is liable:
- (a) in the case of a natural person, to an administrative penalty not exceeding 30,000 penalty units for the first violations and 100,000 penalty units for any second or subsequent violations; or
  - (b) in the case of a company or other entity, to an administrative penalty not exceeding 125,000 penalty units for the first violation and 250,000 penalty units for any second or subsequent violations.
- (2) Administrative penalties payable under subsection (1) shall:
- (a) be evidenced by a certificate signed by the Registrar;
  - (b) constitute a debt due to the Crown; and
  - (c) be paid into the Consolidated Fund; and
  - (d) if not paid within twenty-eight days, attract interest at the prescribed rate and if no such rate is prescribed, at the rate of five percent a year.

## **29D Matters to be taken into account**

The amount of an administrative penalty to be imposed on any person shall be determined taking into account:

- (a) the nature of the violation;
- (b) the frequency and duration of the conduct constituting the violation;

- (c) the history of compliance with this Act and its regulations by the person who committed the violation;
- (d) any other relevant factor.

**29E Vicarious liability**

- (1) A person is liable for a violation committed by:
  - (a) an employee of the person acting in the course of the employee's employment; or
  - (b) an agent of the person acting within the scope of the agent's authority,

whether or not the employee or agent actually committed the violation is identified or proceeded against in accordance with this Act.

- (2) A person shall not be liable under subsection (1) by virtue only of being a Registrar of a company which has (or whose employee or agent has) committed a violation.

**29F Time limit**

No proceedings in respect of a violation may be commenced after five years from the day on which the subject-matter of the proceedings became known to the Registrar or any other person bringing the proceeding.

**29G Proceedings for violation and offences**

If a contravention under this Act or its regulation can be proceeded with either as a violation or as an offence under this Act or its regulations, proceeding in one manner precludes proceeding in the other.

**29H Compounding of violation or offences**

- (1) Subject to subsection (2), if the Minister has reasonable grounds to believe that any person may have committed a violation of or an offence against this Act or its regulations, the Minister may compound such violation or offence by accepting on behalf of the

Crown from such person a sum of money not exceeding the maximum amount of an administrative penalty provided for under this Part or the maximum fine specified for that offence.

- (2) Where the person who may have committed the violation or the offence is no longer within Solomon Islands, the Minister may send written notice of his intention to compound the violation or offence to the last known address of the person outside Solomon Islands.
- (3) No violation or offence shall be compounded under this section:
  - (a) unless the person who may have committed the violation or offence has expressed his willingness in the prescribed form that the violation or offence be so dealt with; or
  - (b) in the case of a notification under subsection (2), if the person concerned notifies the Minister in writing that he does not wish the violation or offence to be compounded and submits to the jurisdiction of the courts of Solomon Islands.
- (4) For the purposes of subsection (3), the Registrar in the case of a violation or the court in the case of an offence, may require such person to file a satisfactory bond or other form of security.
- (5) If the prosecution of a case has been commenced, the compounding of an offence under this section shall be notified in writing to the court signed by both parties, except that in the case of a compounding following a notification under subsection (2), the signature of the Minister alone will suffice.
- (6) In any proceedings brought against any person for a violation or an offence against this Act or its regulation, it shall be a defence if such person proves that the violation or the offence with which he is charged has been dealt with under this Part.
- (7) The power of the Minister to compound a violation or an offence shall be exercised:
  - (a) in the case of a violation, before a determination is made or an action is taken under section 28B(5) or (6); or
  - (b) in the case of an offence, before conviction.

## **PART 6 MISCELLANEOUS**

### **30 Giving of lodging notices and application etc.**

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.

### **31 Issue of duplicate certificate of registration**

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.

### **32 Offence of providing false or misleading statement**

A person commits an offence if the person knowingly makes a statement that is false and misleading in a material particular:

- (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 - 150,000 penalty units or imprisonment for 12 months or both.

If the offender is a body corporate - 750,000 penalty units

### **33 Offence to disclose or improperly use information**

- (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:
  - (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: 300,000 penalty units 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.

### **34 Exemption of liability**

The Government, the Minister, the Investment Facilitating Committee, the Registrar, officers, employees and any person acting under the authority of this Act or of the Committee, including persons with delegated authority for the purposes of implementing this Act, shall not:

- (a) be subject to any action, liability, claim or demand; or
- (b) be liable for any matter or thing done or omitted to be done in good faith (whether negligently or not),

in the performance or for any purported performance of any function or duty, or exercise or purported exercise of any power under this Act.

### **35 Compensation for acquisition of property**

- (1) Subject to this section, if, because of the application of a provision of or under this Act, a person's interest in or right over property is compulsory 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.

### **36 Regulations**

- (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, 30,000 penalty units or, if the offender is a body corporate, 150,000 penalty units.

## PART 7 REPEAL AND SAVINGS AND TRANSITIONAL PROVISIONS

### 37 Definitions

In this Part:

**“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 authorised 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.

### 38 Repeal (Cap 142)

The *Investment Act* is repealed.

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

- (1) On and after the commencement of this Act, a reference in an Act,

28



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.

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

- (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 Transitional: required to apply for certificate of registration**

- (1) This section applies subject to section 42.
- (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 Savings: reserved activities**

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

**43 Savings: entitlements to incentives and exemptions for foreign investors and other investors (Cap 123) (Cap 121)**

- (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 liberalise 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.

## ENDNOTES

### 1

#### KEY

amd = amended	Pt = Part
Ch = Chapter	rem = remainder
Div = Division	renum = renumbered
exp = expires/expired	rep = repealed
GN = Gazette Notice	Sch = Schedule
hdg = heading	Sdiv = Subdivision
ins = inserted	SIG = Solomon Islands Gazette
lt = long title	st = short title
LN = Legal Notice	sub = substituted
nc = not commenced	

### 2

#### LIST OF LEGISLATION

##### ***Foreign Investment Act 2005 (No. 7 of 2005)***

Assent date	16 December 2005
Gazetted	23 December 2005
Commenced	26 June 2006*

*[\*Note: This commencement date was provided by Foreign Investment (Amendment and Validation) Act 2009 (No. 13 of 2009)]*

##### ***Foreign Investment (Amendment and Validation) Act 2009 (No. 13 of 2009)***

Assent date	5 August 2009
Gazetted	14 August 2009
Commenced	14 August 2009

##### ***Rectification Order 2010 (LN 44 of 2010)***

Gazetted	10 June 2010
Commenced	10 June 2010

### 3

#### LIST OF AMENDMENTS

s 1	amd by Act No. 13 of 2009
s 22	amd by Act No. 13 of 2009
Pt 5A	ins by Act No. 13 of 2009
s 29H	amd by LN 44 of 2010
s 32	amd by Act No. 13 of 2009
s 33	amd by Act No. 13 of 2009
s 34	sub by Act No. 13 of 2009
s 36	amd by Act No. 13 of 2009