

REPRINT

INVESTMENT ACT (CAP. 142)

As in force at: 1 April 1997

STATUS: REPEALED

This version is that in force at the date stated above.

For list of amendments see Endnotes

Repealed by the Foreign Investment Act 2005 (No. 7 of 2005)
from 26 June 2006

**AN ACT TO MAKE PROVISIONS FOR THE PROMOTION OF LOCAL AND
FOREIGN INVESTMENT.**

INVESTMENT ACT (CAP. 142)

Table of provisions

1	Short title	1
2	Interpretation	1
3	Constitution of the Board and its secretariat	3
4	Functions of the Board	3
5	Approval of application for foreign investment	4
6	Foreign investor to register with Board and possess certificate of approval	5
6A	Grant of work permits, visa, etc.	6
7	Application for incentives by investor	6
8	Prescribed undertaking may make application	6
8A	Application of incentives in respect of mining enterprise	7
9	Further tax exemption period or additional incentives subject to certain restrictions	7
10	Criteria for investment approval	8
10A	Deposit in foreign currency or exchange	9
11	Revocation of approval in certain cases	9
12	Registers	9
13	Approval of Board required to vary investment	10
13A	Restrictions on the acquisition of interests in land	11
14	Guarantees	11
15	Board may direct any approval to be withdrawn	11
16	Minister to prescribe fees, etc.	12
17	Regulations	12
18	Provisions supplementary to provisions in any other Act	12
19	Technology and any other external agreements	13
20	Transitional and savings	13
21	Penalty	13

INVESTMENT ACT (Cap. 142)

As in force at: 1 April 1997

1 Short title

This Act may be cited as the *Investment Act*.

2 Interpretation

In this Act, unless the context otherwise requires:

“approved enterprise” means an investment approved by the Board under sections 5, 6, 7 or 8;

“Board” means the Investment Board established under section 3;

“foreign investment” means any industrial, commercial, business or service undertaking carried on by a foreign investor in Solomon Islands and includes any such under-taking which:

- (a) does not have its central management or control in Solomon;
- (b) has its voting power controlled by a person who is not a citizen of Solomon Islands;
- (c) is incorporated or established by or under any law outside Solomon Islands;
- (d) is an enterprise in which a joint venture is established;
- (e) has the voting power held, controlled or value of shares beneficially owned by persons who are not citizens of Solomon Islands; or
- (f) is carried on in the name of an agent, associate, nominee or a person closely connected with a foreign investor. For the purposes of this sub-paragraph, a person is closely connected with a foreign investor, where the Board in its opinion considers that such persons are substantially identical or that the ultimate controlling interest is owned or deemed to be owned by the

foreign investor;

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

- (a) a body corporate or any other organisation established in Solomon Islands, in which a foreign investor holds the whole or any part of the equity or ownership in the capital;
- (b) a branch in Solomon Islands of a body corporate or any other business organisation not established in Solomon Islands;

“incentives” means the benefits that an approved enterprise may qualify for under the *Income Tax Act*, the *Customs and Excise Act* and other relevant or qualifying Acts;

“investor” means any person or company including a foreign investor;

“Minister” means the Minister for the time being charged with responsibility for investment in Solomon Islands;

“prescribed undertaking” means any industrial, commercial, business or service undertaking in operation in Solomon Islands on the date of commencement of this Act;

“relevant or qualifying Act” means any law under which an investor may qualify for the grant of incentives or exemptions;

“technology or external agreement” means an agreement which involves payments in local or foreign currency for royalty or professional services and includes licensed rights over specific processes, formulae or manufacturing technology (patent or unpatented), knowledge and expertise necessary for the setting up of plant, building, and provisions of various assistance and supporting services which may be in the form of agreements of joint venture, technical, assistance know how, licence, patent and trade marks, sales commissions, turn-key contracts, contracts to build, operate and transfer or management.

3 Constitution of the Board and its secretariat

- (1) The Investment Board established under the *Foreign Investment Act 1984*, (repealed by this Act) shall continue to function as the Investment Board until a new Board is appointed under the provisions of this Act.
- (2) The Board appointed under the provisions of this Act shall consist of the Minister as Chairman and such other members being not less than six nor more than eight appointed by the Minister with the approval of Cabinet.
- (3) The quorum for a meeting of the Board shall be one half of the number of members, one of whom shall be the Chairman or his designate, who shall in addition to an original vote have a casting vote in case the voting is equal.
- (4) The Board shall meet when the Chairman requires but in any event not less than once in every three months.
- (5) The Investment Division of the Ministry dealing with investment for the time being shall act as the secretariat to the Board.
- (6) The Chief Officer of the Investment Division shall be the Secretary of the Board who shall maintain the records of the proceedings of the Board and all other such records and data as may be required by the Board or Chairman.

4 Functions of the Board

The functions of the Board shall be:

- (a) to approve any foreign investment in Solomon Islands in terms of this Act;
- (b) to approve any technology or external agreements;
- (c) to approve any application for the grant of incentives under any relevant or qualifying Act;
- (d) to co-ordinate with relevant Ministries, Provincial Governments, Honiara Town Council and other Government Agencies in order to facilitate the obtaining of approval for proposed investment;

3

- (e) to issue certificates of approval to approved investors;
- (f) to monitor compliance with the terms and conditions of any approval granted under this Act and other relevant or qualifying Acts; and
- (g) to review and advise the Government on policies and procedures relating to the promotion and regulation of investments, whether local or foreign and matters connected therewith.

5 Approval of application for foreign investment

- (1) On receipt of an investment application from a foreign investor and on being satisfied that the proposal would be beneficial or would further the economic development of Solomon Islands, the Board shall give notice of such application to the appropriate ministries and the provincial government within whose area the proposed investment scheme is to be operative.
- (2) Any government ministry or provincial government affected by a proposed investment scheme shall, within the prescribed time and in the prescribed manner submit to the Board any objections or representations, which it may desire to make in respect of the proposal.
- (3) Where any notice is given under subsection (1), the appropriate ministry and provincial government shall comply with such notice within the time specified in the notice and forward to the Board their objections or representations with a statement of particulars in regard to the consultations held, if any, with persons interested or whose interests are likely to be affected.
- (4) Where the appropriate ministry or the provincial government does not respond within the time specified in the notice, the Board, where it deems that the proposal satisfies the criteria specified in section 10, may enter into direct consultations with the parties whose interests are likely to be affected.
- (5) The Board may, when approving an investment proposal take into consideration any objections or representations made to it in pursuance of this section and shall afford the persons or bodies

making such objections or representations an opportunity to be heard.

- (6) Upon the approval of an investment proposal under this section, the Board shall issue to such investor a certificate of approval on such terms and conditions as it deems fit to impose.
- (7) In this section the reference to “provincial government” includes the Honiara Town Council, area assembly or other area declared to be a town for the purposes of the *Local Government Act*,

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

- (1) Subject to the provisions of section 20, from and after the commencement of this Act no foreign investor shall engage in any investment in Solomon Islands, unless the foreign investor is registered with the Board and is in possession of a certificate of approval in terms of this Act.
- (2) Where the Board is of the opinion that any investment or undertaking carried on by a person who is not a citizen of Solomon Islands is in breach of the provisions of this Act, it may by notice in writing call upon such person to show cause within a specified period, why the investment or undertaking should not be declared a foreign investment.
- (3) If, after considering any representations made by such person referred to in subsection (2), the Board is of the opinion that such investment or undertaking:
 - (a) qualifies for foreign investment status, it shall require such person to comply with the requirements of this Act;
 - (b) does not qualify for foreign investment status it shall require such person to cease operations and advise the Director of Immigration and the Commissioner of Labour to take measures to withdraw the permits issued to such person.
- (4) A person aggrieved by any action taken under subsection (3) may appeal to the High Court which may make such order as it deems fit in the circumstances.

- (5) Any foreign investor who is in breach of the provisions of this section shall be liable on conviction to a fine not exceeding fifty thousand dollars or in default of payment to imprisonment for two years.

6A Grant of work permits, visa, etc.

No foreign investor shall be granted any work permit, visa or other document enabling him or an expatriate employee of such foreign investor to engage in any form of investment or undertaking in Solomon Islands unless such investor has been granted a certificate of approval by the Board.

7 Application for incentives by investor

- (1) Any investor may make application in the prescribed form to the Board for the grant of incentives in respect of any proposed or existing investment or enterprise.
- (2) Where the Board receives an application referred to in subsection (1), the Board shall give notice of the application to the appropriate Ministries and Government Agencies and seek their approval in respect of the investment or enterprise.
- (3) On receipt of confirmation from the appropriate Ministries and Government Agencies that the investment or enterprise is approved as it complies with the requirements of the relevant or qualifying Acts, the Board may approve such investment or enterprise as an approved enterprise.
- (4) Where the investment or enterprise does not qualify for incentives in terms of any relevant or qualifying Acts, the Board shall inform the applicant accordingly.
- (5) On receipt of approval from the Board, the approved enterprise shall be entitled to the agreed incentives provided for under the *Income Tax Act*, the *Customs and Excise Act* and other relevant or qualifying Acts.

8 Prescribed undertaking may make application

Any prescribed undertaking may apply to the Board for the grant of incentives in the manner provided under section 7 and the provisions

of section 7 shall *mutatis mutandis* apply in relation to the application.

8A Application of incentives in respect of mining enterprise

- (1) Notwithstanding the provisions of sections 7 and 9, where a foreign investor has entered into an agreement with the Government of Solomon Islands, in relation to a mining enterprise or any other large scale investment, such foreign investor or mining enterprise shall, subject to the relevant law, only be entitled to the incentives granted pursuant to the agreement and not the incentives provided in sections 7 or 9.
- (2) In this section “**mining enterprise**” means any operation for exploration, prospecting or extraction of minerals within the meaning of the *Mines and Minerals Act*.

9 Further tax exemption period or additional incentives subject to certain restrictions

- (1) No approved enterprise shall be entitled to more than one tax exemption or other incentives within the agreed period, in respect of any particular investment or undertaking, so however, that any such approved enterprise may make application for a further tax exemption period provided:
 - (a) a substantial additional investment is proposed;
 - (b) the approved enterprise has satisfied the conditions stipulated in relation to its original investment;
 - (c) a part of the profits earned is reinvested in the particular investment or undertaking as specified in the certificate of approval or as otherwise specified by the Board.
- (2) Where the Board is satisfied that an approved enterprise referred to in subsection (1) has satisfied the conditions stipulated in its original investment and that the additional investment is of a kind that would be of benefit to Solomon Islands, it may recommend to the Commissioner of Inland Revenue and the Comptroller of Customs and Excise, as the case may require, to grant the approved enterprise further tax exemptions not exceeding a period of five years, and other incentives it may qualify for in terms of the

investment.

10 Criteria for investment approval

- (1) In approving an application under sections 5, 7, 8 or 9, the Board shall take into consideration:
 - (a) the extent to which the investment would further the economic development of, or be of benefit to the economy of Solomon Islands;
 - (b) the number of citizens of Solomon Islands that would be employed and the training such persons employed are likely to receive;
 - (c) the number of foreign citizens likely to be employed, (such employment being permitted only where nationals of Solomon Islands do not possess the necessary skills);
 - (d) the amount of local raw materials and supplies to be used;
 - (e) the capacity or potential of the enterprise or investment to promote exports or substitute imports;
 - (f) the extent to which the proposed investment would be dispersed in the provinces;
 - (g) the extent and capacity to transfer technology;
 - (h) the extent and capacity to which the investment would benefit or provide for related or ancillary services; and
 - (i) the total paid-up capital in the investment and the loan financing arrangements.
- (2) Where the application referred to in subsection (1) is in respect of a foreign investment, the Board shall in addition to the conditions specified in subsection (1), have particular regard to:
 - (a) the maximum and minimum total capital investment and the percentage of foreign capital (emanating from external sources) in the equity or ownership in the capital of the approved enterprise of investment;

- (b) the value of such assets where the investment is in the form of tangible assets, other than foreign currency or exchange.

10A Deposit in foreign currency or exchange

- (1) Where approval is granted to a foreign investor making an application under section 5, the Board may where it considers appropriate direct that the granting of the certificate of approval is subject to the deposit by the foreign investor of a specified sum in foreign currency or exchange with any commercial bank of Solomon Islands, which moneys the foreign investor is required to expend or disburse in Solomon Islands for the purposes for which approval is granted.
- (2) The specified sum referred to in subsection (1) shall be determined by the Board in accordance with regulations made by the Minister.

11 Revocation of approval in certain cases

- (1) Where the Board is satisfied that in respect of any approved foreign investment or additional investment there is a failure to commence or operate such foreign investment or undertaking as approved, the Board may by notice in writing require the investor to establish to the satisfaction of the Board in writing within such period as the notice shall specify that such failure is due to circumstances beyond the control of such investor and that there is a reasonable prospect of commencing the original investment within a reasonable time. If the Board does not receive, within the period referred to in this subsection, written information which is satisfactory to it, the Board may, if it thinks it expedient so to do, revoke the approval granted.
- (2) Where the Board is satisfied that in respect of any application for foreign investment any representations made in connection with the application were false in any material particular or were made with intent to deceive or were otherwise not made in good faith and that such representations substantially influenced the grant of approval, the Board may revoke the approval so granted.

12 Registers

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

13 Approval of Board required to vary investment

- (1) Except with the approval of the Board, no approved enterprise shall:
 - (a) acquire any interest in or take over any other enterprise; or
 - (b) diversify into any other non-related activity, unless otherwise specified in the certificate of approval.
- (2) Where the approved enterprise is a foreign investment, such investment or enterprise in addition to complying with the requirements of subsection (1) shall not, except with the prior approval of the Board:
 - (a) increase its approved percentage of foreign investment;
 - (b) alter or change its majority shareholdings; or
 - (c) dispose of the equity or ownership during the tax exemption period;
- (3) Where an approved enterprise seeks approval from the Board to effect any change mentioned in subsections (1) or (2), the Board shall not unreasonably withhold such approval.
- (4) Any transfer of shareholding in a company or other change of ownership which has the effect of substantially changing the identity of the foreign investor is deemed to be a transfer contrary to subsection (2) and shall render the approval invalid.
- (5) Where a foreign investor transfers or otherwise disposes of a certificate of approval granted under this Act, all concessions or benefits enjoyed or to which such approved foreign investor was entitled shall cease as of the date of such transfer or disposition and the Minister shall by notice published in the *Gazette* make a declaration to the effect that the certificate of approval granted in respect of the particular investment is cancelled.
- (6) Any foreign investor who is aggrieved by a decision made under this section, may within 30 days of the publication of such notice in the *Gazette* appeal to the Minister in writing stating full particulars of the nature of the transfer, change of ownership or other disposition.

- (7) The onus of proving that the nature of the transfer or disposition does not alter or substantially change the identity of the original foreign investor is on the person appealing.

13A Restrictions on the acquisition of interests in land

No foreign investor shall purchase or acquire any perpetual estate or fixed term estate in any land in Solomon Islands unless:

- (a) the purchase or the acquisition of such interest is for the purpose of carrying out the approved foreign investment or solely for residential purposes of such foreign investor or his employees; and
- (b) the payment for the acquisition of such estate is made through external funds or foreign currency paid into any commercial bank of Solomon Islands.

14 Guarantees

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

- (a) the proceeds of sale of all or any part of the approved enterprise;
- (b) the dividends in case of a body corporate and profits in other cases from the approved enterprise.

15 Board may direct any approval to be withdrawn

- (1) Where any approved enterprise fails to comply with the provisions of this Act or the provisions of the certificate of approval, the Board may:
 - (a) direct the respective Ministries to withdraw, alter or disallow any or all incentives granted; or
 - (b) withdraw the certificate of approval.
- (2) Before taking any action under subsection (1), the approved enterprise shall be informed in writing of the nature of the

contravention or non-compliance and be afforded an adequate opportunity to represent its case, and the Board may, if it thinks fit permit an opportunity for the contravention or non-compliance to be corrected.

16 Minister to prescribe fees, etc.

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

17 Regulations

- (1) The Minister may, in consultation with the Board, make regulations for the purposes of carrying this Act into effect, and in particular, without prejudice to the generality of the foregoing with respect to any of the following matters:
 - (a) prescribe charges for anything required to be done by the Board;
 - (b) prescribe forms for application, certificates or any other documents to be issued;
 - (c) prescribe the procedure to be followed in forwarding an application under this Act; or
 - (d) prescribe or specify the sector or activities which are open or closed to foreign investment and activities which are open to foreign investment in partnership with an individual or an enterprise owned by citizens of Solomon Islands;
 - (e) prescribe any matter which may be or is required to be prescribed under the provisions of this Act.
- (2) Regulations made under subsection (1) may make different provisions for different classes or categories of investments.

18 Provisions supplementary to provisions in any other Act

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

19 Technology and any other external agreements

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

20 Transitional and savings

- (1) The *Foreign Investment Act, 1984* (hereinafter referred to as the “repealed Act”) is hereby repealed.
- (2) Notwithstanding such repeal from and after the date of coming into operation of this Act:
 - (a) any certificate of approval granted under the repealed Act shall continue to be valid on such terms and conditions of approval for the period stipulated therein;
 - (b) a foreign investor shall be entitled to enjoy any investment guarantee approved under the repealed Act for such approved period; and
 - (c) any foreign investor as defined in this Act, who is operating any enterprise without approval or registration under the repealed Act shall hereafter be required to obtain approval from the Board and such approval shall not be unreasonably withheld.

21 Penalty

Where a person is in breach of any provisions of this Act, for which no penalty has been prescribed, such person shall be liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

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	

NOTE

This Reprint comprises the Act and amendments as in force on 1 March 1996 and published as Chapter 142 of the Revised Edition of the Laws of Solomon Islands, together with amendments made to the Act since that date.

2

LIST OF LEGISLATION

Investment Act (Cap. 142)

Constituent legislation: 14 of 1990 (Commenced 18 January 1991)

Investment (Amendment) Act 1996 (No. 10 of 1996)

Assent date	30 January 1997
Gazetted	7 February 1997
Commenced	1 April 1997

Repealed by Foreign Investment Act 2005 (No. 7 of 2005)

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

3

LIST OF AMENDMENTS

s2	amd by Act No. 10 of 1996
s5	sub by Act No. 10 of 1996
s6	amd by Act No. 10 of 1996
s6A	ins by Act No. 10 of 1996
s8A	ins by Act No. 10 of 1996
s9	amd by Act No. 10 of 1996
s10	sub by Act No. 10 of 1996
s10A	ins by Act No. 10 of 1996

s11	subs by Act No. 10 of 1996
s13	amd by Act No. 10 of 1996
s13A	ins by Act No. 10 of 1996
s17	amd by Act No. 10 of 1996
s21	ins by Act No. 10 of 1996