



**FOREIGN INVESTMENT
(AMENDMENT AND
VALIDATION) BILL 2009**

(BILL NO. 14 OF 2009)



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Entitled

AN ACT TO AMEND THE FOREIGN INVESTMENT ACT AND TO
PROVIDE FOR RETROSPECTIVE COMMENCEMENT OF THE ACT
AND TO VALIDATE ALL ACTS DONE BEFORE THE 19TH DAY OF
OCTOBER 2007

ENACTED by the National Parliament of Solomon Islands.

**FOREIGN INVESTMENT (AMENDMENT AND VALIDATION)
BILL 2009**

Citation and commencement

1. This Act may be cited as the Foreign Investment (Amendment and Validation) Act 2009, and commences on the date it is published in the *Gazette*.

Section 1 amended

2. Section 1 of the principal Act is amended by repealing subsection (2) and substituting the following subsection –

“(2) This Act is deemed to have commenced on 26 June 2006.”.

Section 22 amended

3. Section 22 of the principal Act is amended in subsection (4) by deleting “\$50,000” and “\$250,000” and substituting “75,000 penalty units” and “400,000 penalty units”, respectively.

New Part 5A added

4. The principal Act is amended by adding after section 29 the following sections and Part 5A–

“PART 5A – ADMINISTRATIVE PENALTIES AND
COMPOUNDING OF OFFENCES

“Purpose of this Part”

“29A. The purpose of administrative penalty provisions in this Part is to promote compliance with this Act and not to punish.”.

“Violation”

“29B. (1) Any contravention of or failure to comply with a provision of this Act, or its regulation, is a violation.

(2) If the Director has reasonable grounds to believe that a person has committed a violation, the Director 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 Director.

(4) The person served with a notice under subsection (2) may make representations in writing to the Director in response to the notice of violation.

(5) The Director 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 Director determines that the person committed the violation, the Director 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 Director 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 Director may require;
- (c) require the person to provide periodic reports to the Director to assist the Director 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.”.

“Administrative penalties”

“29C. (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 a subsequent violation; 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 a subsequent violation.

(2) Administrative penalties payable under subsection (1) shall—

- (a) be evidenced by a certificate signed by the Director;
- (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.”.

“Matters to be taken into account”

“29D. 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.”.

“Vicarious liability”

“29E. (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 director of a company which has (or whose employee or agent has) committed a violation.”.

“Time limit” “29F. 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 Director or any other person bringing the proceeding.”.

“Proceedings for violation and offences” “29G. 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.”.

“Compounding of offences” “29H. (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 Director 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.”.

Section 32 amended **5.** Section 32 of the principal Act is amended by deleting “\$100,000” and “\$500,000” and substituting “150,000 penalty units” and “750,000 penalty units”, respectively.

Section 33 amended **6.** Section 33 of the principal Act is amended in subsection (1) by deleting “\$200,000” and substituting “300,000 penalty units”.

Section 34 replaced **7.** The principal Act is amended by repealing section 34 and substituting the following section –

“Exemption of liability
34. 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.”.

8. Section 36 of the principal Act is amended in subsection (2)(d) by deleting “\$20,000” and “\$100,000” and substituting “30,000 penalty units” and “150,000 penalty units”, respectively.

Section 36
amended

9. (1) All actions taken under the principal Act before the 19th day of October 2007 shall be deemed to have been taken and continued in operation as valid and effective as if they were taken and continued under the principal Act.

Validation of acts

(2) The validity and continued operation of any action validated under this section shall not be called into question, nor shall be deemed to have been questionable, by or before any court or public officer, merely on the ground that the principal Act was purportedly brought into operation before the 19th day of October 2007.

(3) No court shall entertain any legal proceedings –

- (a) questioning the validity and continued operation of any action validated under this section; or
- (b) claiming any compensation or damages for any loss founded on any action validated under this section and its continued operation.

(4) The appointment of the 19th day of October 2007 as the commencement date of the principal Act is vacated.

**FOREIGN INVESTMENT (AMENDMENT AND
VALIDATION) BILL 2009**

Objects and Reasons

The objects of the Bill are to validate all acts done before 19 October 2007 and to amend certain provisions, in particular to introduce an administrative penalty system and compounding of offences.

Explanatory Memorandum

Clause 1 provides for the short title and commencement.

Clause 2 amends section 1 of the principal Act to provide for the retrospective application of the Act from the first purported date of commencement on 26 June 2006.

Clause 3 amends section 22 to increase the penalties and also to convert them into penalty units.

Clause 4 adds new Part 5A to introduce an administrative penalty system and compounding of offences.

Clause 5 amends section 32 to increase the penalties and also to convert them into penalty units.

Clause 6 amends section 33 to increase the penalty and also to convert it into penalty units.

Clause 7 repeals section 34 and replaces it with a new section 34.

Clause 8 amends section 36 to increase the penalty and also convert it into penalty units.

Clause 9 validates all acts taken under the principal Act before 19 October 2007.

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**MINISTER FOR COMMERCE, INDUSTRY, EMPLOYMENT AND
IMMIGRATION**