

INTRODUCTION FILE

THE INVESTMENT (AMENDMENT) BILL 1996

(NAME OF BILL)

CONTENTS: Bill
Objects and Reasons
Notice of Presentation
Covering letter from Minister to Clerk to Parliament
(Authorisation from Minister of Finance under s.60 of Constitution)

FROM: Attorney General's Chambers *(11/11/96)*

TO: Minister *22/11/96*
(for signing Objects & Reasons, Notice of Presentation and covering letter to Clerk)

TO: Minister of Finance
(for signing of letter to Clerk signifying Cabinet approval under s.60 of Constitution)

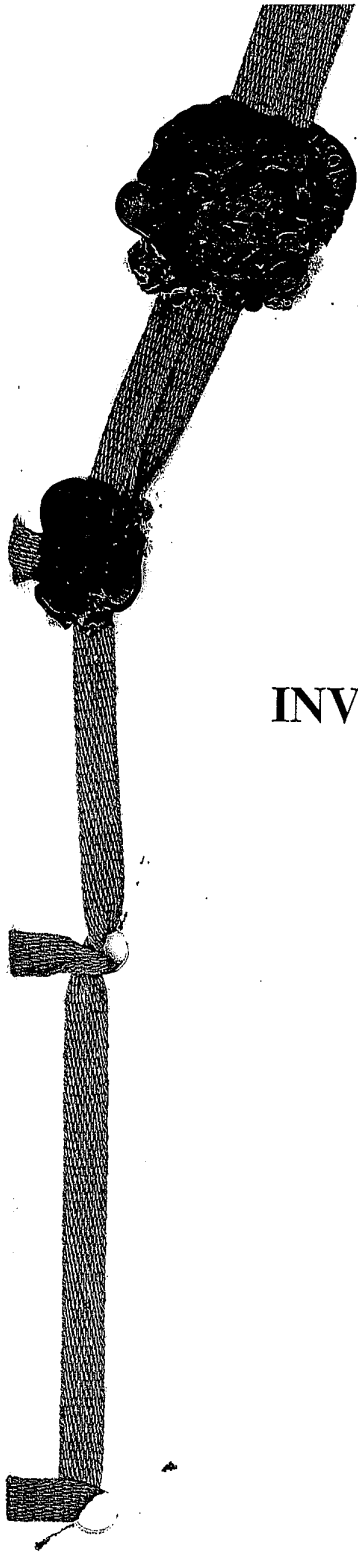
TO: Clerk to National Parliament *SPD 26/11/96*
(for certificate by Speaker)

TO: Attorney General's Chambers
(for printing)

TO: Clerk to National Parliament
(for reference during 1st, 2nd and 3rd Readings)
(Date passed..... *4/12/96* Act No. *10/96*)

TO: Attorney General's Chambers
(for checking before Assent) *29/11/97*

TO: Governor-General
(for Assent) *4.12 28/12/97*




**THE
INVESTMENT (AMENDMENT)
ACT 1996
(NO. 10 OF 1996)**

THE INVESTMENT (AMENDMENT)
ACT 1996

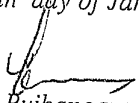
(NO. 10 OF 1996)

Passed by the National Parliament this fourth day of December 1996.

This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be true and correct copy of the said Bill.


James Saliga
Clerk to National Parliament

Assented to in Her Majesty's name and on her Majesty's behalf this thirtieth day of January 1997.


Moses Puibangara Pitakaka
Governor-General

Date of commencement: see section 1.

AN ACT To Amend the Investment Act 1990.

ENACTED by the National Parliament of Solomon Islands.

THE INVESTMENT (AMENDMENT) ACT 1996

ARRANGEMENT OF SECTIONS

Section:

1. SHORT TITLE AND COMMENCEMENT.
2. AMENDMENT OF SECTION 2 OF ACT NO. 14 OF 1990.
3. REPEAL AND REPLACEMENT OF SECTION 5.
4. AMENDMENT OF SECTION 6.
5. INSERTION OF NEW SECTION 6A
6. INSERTION OF NEW SECTION 8A.
7. AMENDMENT OF SECTION 9.
8. REPEAL AND REPLACEMENT OF SECTION 10.
9. INSERTION OF NEW SECTION 10A.
10. REPEAL AND REPLACEMENT OF SECTION 11.
11. AMENDMENT OF SECTION 13.
12. INSERTION OF NEW SECTION 13A.
13. AMENDMENT OF SECTION 17.
14. INSERTION OF NEW SECTION 21.

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Short title and commencement.

Amendment of section 2 of Act No. 14 of 1990.

1. This Act may be cited as the Investment (Amendment) Act, 1996 and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

2. Section 2 of the Investment Act (hereinafter referred to as the "principal Act") is hereby amended as follows -

(a) by deleting the definition of "foreign investment" and substituting therefor the following new definition -

"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; and

(b) by deleting the definition of "technology or external agreement" and substituting therefor the following new definition -

"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.”

Repeal and replacement of section 5.

3. Section 5 of the principal Act is hereby repealed and the following new section substituted therefor -

“Approval of application for foreign investment.

5. (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,".

cap.14.

4. Section 6 of the principal Act is hereby amended as follows -

Amendment of section 6.

(a) by renumbering the existing section as subsection (1) thereof; and

(b) by adding thereto immediately after the subsection so renumbered the following as subsections (2), (3), (4) and (5) respectively -

" (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."

5. The principal Act is hereby amended by inserting therein immediately after section 6 the following new section as section

Insertion of new section 6A.

A -

“Grant of work permits, visa, etc.

6A. 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.”

Insertion of new section 8A.

6. The principal Act is hereby amended by inserting therein immediately after section 8 the following new section as section 8A -

“Application of incentives in respect of mining enterprise.

8A. (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 for 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.

Act No.3 of 1990.

Amendment of section 9.

7. Subsection (1) of section 9 of the principal Act is hereby amended in the following respects -

(a) by deleting the word “and” which appears at the end of paragraph (a);

(b) by deleting the full stop that appears at the end of paragraph (b) and substituting therefor a semi-colon and the word “and”; and

(c) by adding immediately after paragraph (b) the following new paragraph as paragraph (c) thereof -

“ (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.”

Repeal and replacement of section 10.

8. Section 10 of the principal Act is hereby repealed and the following new section substituted therefor -

“Criteria for investment approval.

10. (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; and

(c) the extent of direct investment in the form of foreign currency or exchange."

9. The principal Act is hereby amended by inserting therein immediately after section 10 the following new section as section 10A -

Insertion of new section 10A.

10A. (1) Where approval is granted to a foreign investor making an application under section 5, the Board may where it considers

“Deposit in foreign currency or exchange.

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."

Repeal and replacement of section 11.

10. Section 11 of the principal Act is hereby repealed and the following new section substituted therefor -

"Revocation of approval in certain cases.

11. (1) Where the Board is satisfied that in respect of any approved foreign investment or additional investment there is 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."

Amendment of section 13.

11. Section 13 of the principal Act is hereby amended in the following respects -

- (a) in subsection (2) -
- (i) by deleting the word "or" that appears at the end of paragraph (a) thereof;

- (ii) by deleting the full stop that appears at the end of paragraph (b) and substituting therefor a semi-colon and inserting the word "or" immediately thereafter; and
- (iii) by adding immediately after paragraph (b), the following paragraph as paragraph (c) -
 - " (c) dispose of the equity or ownership during the tax exemption period;" and
- (b) by adding immediately after subsection (3) the following new subsections as subsections (4), (5), (6) and (7) respectively -

" (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."

12. The principal Act is hereby amended by inserting therein immediately after section 13 the following new section as section 13A -

Insertion of new
section 13 A.

13A. No foreign investor shall purchase or acquire any perpetual estate or fixed term estate in any land in Solomon Islands unless -

"Restrictions on the acquisition of interests in land.

(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."

Amendment of section 17.

13. Subsection (1) of section 17 of the principal Act is hereby amended in the following respects -

(a) by renumbering paragraph (d) as paragraph (e) thereof; and

(b) by inserting immediately before the paragraph so renumbered the following as paragraph (d) thereof -

"(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;"

14. The principal Act is hereby amended by inserting after section 20, the following new section as section 21 -

Insertion of new section 21.

"Penalty.

21. 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."