

Development Investment (Investment Code) Order 2003

3. Interpretation – Unless the context otherwise requires, expressions used in this Order have the same meanings as in the Development Investment Act 1995-96.

4. New Investment Code established – (1) This subclause establishes the Investment Code set out in the Schedule.

(2) The Schedule is part of this Order.

5. Investment Code made under 1977 Act revoked – The Investment Code published pursuant to the Development Investment Act 1977, and continued in force by section 43(1) of the Development Investment Act 1995-96, is revoked.

Clerk of the Executive Council

This Order is administered in the Development Investment Board

**BY AUTHORITY:
COOK ISLANDS GOVERNMENT – 2003**

SCHEDULE**Clause 4****INVESTMENT CODE ESTABLISHED UNDER DEVELOPMENT
INVESTMENT ACT 1995-96**

Investment Code 2003

INDEX

<u>Parts</u>	<u>Page Number</u>
Introduction	4
A. General Investment Policy	4
B. Priority Areas for Investment	4
C. Foreign Investment Policy	5
D. Reserved Investment Areas	6
E. Exceptions	7
F. Measuring Net Economic Contribution	8
G. Criteria For Evaluation Of Foreign Enterprises Applying For Approval To Carry On Business In The Cook Islands	9

INTRODUCTION

1. This Investment Code is a statement of policy by Government, pursuant to the Development Investment Act 1995-96, to encourage and guide development investment in the Cook Islands.
2. Its purpose is to inform potential investors as well as the Development Investment Board and others responsible for planning, promoting, or encouraging investment in the Cook Islands, of the following:
 - (a) The investments and activities which merit encouragement;
 - (b) The priorities attached to particular investments and activities;
 - (c) The kinds of activities reserved for Cook Islands enterprises;
 - (d) The criteria by which foreign enterprises may be evaluated for approval to carry on a business in the Cook Islands.

PART A. GENERAL INVESTMENT POLICY

1. Business activities *must* contribute significantly to the economic development of the Cook Islands and result in a net economic benefit either to the Cook Islands or to at least one island in the Cook Islands.
2. Investment by Cook Islanders should be given priority. A number of business activities are, subject to specified exceptions, reserved for Cook Islanders to develop and expand. However, suitable joint venture projects between foreign investors and Cook Islanders should be encouraged.

PART B. PRIORITY AREAS FOR INVESTMENT

1. The Board should encourage investment (by Cook Islanders and others) in activities that are in the agriculture, marine resources, or tourism industry.
2. For instance, where a foreign enterprise applies for approval to carry on business in the Cook Islands in such an activity, the Board should give due consideration to the application notwithstanding the Foreign Investment Policy set out in **Part C**.

PART C. FOREIGN INVESTMENT POLICY
--

FOREIGN INVESTMENT POLICY

1. Foreign investment can contribute to the future development of the country but should be restricted as set out below.
2. “Foreign enterprise” is defined in section 2(1) of the Development Investment Act 1995-96. Stated generally, it refers to an enterprise or an activity which is owned one third (33.3%) or more by an overseas investor.
3. The Board should not approve or register a foreign enterprise to carry on business in the Cook Islands in any activity unless the Board is satisfied, at a minimum, –
 - (a) That the activity concerned is not an activity listed in **Part D** as a reserved investment area; or
 - (b) Where the activity is so listed, that–
 - (i) One or more of the exceptions specified in **Part E** applies to the proposal to carry on business in the activity concerned; and
 - (ii) The project proposed would generate a demonstrable net economic contribution to the Cook Islands or to at least one island in the Cook Islands (evaluated according to **Part F**).
4. Participation by Cook Islanders in foreign enterprises is a desired objective. Such participation may take various forms including shareholding, control of the enterprise, profit sharing, payment of a percentage of gross receipts, or transfer of skills and technology. Joint ventures should be encouraged.
5. In addition, the Board should apply the criteria set out in **Part G** when evaluating applications by foreign enterprises for approval to carry on business in the Cook Islands.

PART D. RESERVED INVESTMENT AREAS
--

Paragraph 3(a) of **Part C** refers to the following reserved investment areas:

AGRICULTURE

- Commercial agricultural or food production

MARINE RESOURCES

- Pearl farming
- Commercial aquaculture or harvesting of pearl shell, shell fish or other reef or lagoon products
- Commercial fishing (long line, purse seiner or similar)
- Fresh fish processing
- Fresh fish exporting
- Fish bait production

MANUFACTURING & PRODUCTION

- Food processing including freezing and drying, or drink bottling
- Screen printing of fabrics or other piece goods
- Garment manufacture
- Making of traditional or cultural handicrafts and artifacts (including commercial reproductions)
- Recordings of cultural performances
- Jewellery

TOURISM

- Visitor accommodation
- Motor vehicle rentals
- Diving operations
- Water-sports operations (water skis, parasailing, jet-skis, etc.)
- Tourist tours or transfers
- Eco-tourism

OTHER AREAS

- Cinema operations
- Cultural attractions (including cultural performances)
- Bakeries or pastry shops
- Grocery retail outlets (including sundry stores, superettes, and supermarkets)
- Ownership of galleries for paintings or other visual arts
- Motor vehicle dealers
- Restaurants, cafés, or other food preparation and sale operations
- Retail of traditional or cultural handicrafts and artifacts (including commercial reproductions)
- Sale or supply of computer hardware or related services

- ❑ Trucking and cartage operations
- ❑ Taverns or public bars
- ❑ Duty free shops
- ❑ Laundry or dry-cleaning
- ❑ Places offering Internet access (e.g. internet cafés)
- ❑ Audio or video production, hire, or sale
- ❑ Hair dressing salons, beauty parlors, or health spas

PART E. EXCEPTIONS

Paragraph 3(b)(i) of **Part C** refers to the following exceptions:

1. The foreign enterprise wishes to acquire an existing business, notwithstanding that it may be listed in **Part D**, where the owner of the business has made a genuine and demonstrable effort to the satisfaction of the Development Investment Board to sell the business to Cook Islanders, but—
 - (a) Has been unable to do so; or
 - (b) Has been able to do so only at a price so far below the price obtainable by selling to the foreign enterprise, that in all the circumstances it would be unreasonable to require the owner of the business to sell to a Cook Islander.
2. The foreign enterprise wishes to establish a new business in an activity where—
 - (a) There is a demonstrable demand for that activity; and
 - (b) No Cook Islander is currently carrying on business in that activity.
3. Existing Cook Islands enterprises do not have the resources to carry out the specific project (e.g. specialised construction project) comprising the activity.
4. The foreign enterprise is a joint venture involving Cook Islanders (the greater the ownership and participation by Cook Islanders, the more likely it is to obtain approval).

Development Investment (Investment Code) Order 2003

5. The foreign enterprise brings to the Cook Islands a capital investment in cash of–
- (a) In the case of Rarotonga, not less than NZD\$1,000,000.00; or
 - (b) In the case of an island other than Rarotonga, not less than NZD\$500,000.00.
- However, where the foreign enterprise is skills or technology oriented and does not require capital outlay to these extents, smaller projects may be considered.
6. The foreign enterprise proposes to develop a niche market or niche product.

PART F. MEASURING NET ECONOMIC CONTRIBUTION
--

In determining net economic contribution for the purposes of paragraph 3(b)(ii) of **Part C**, the Board should take into consideration the net effect of the following factors where applicable to the project concerned:

- local employment or business for Cook Islanders generated;
- new skills and technology transfer to Cook Islanders generated;
- 70% real capital injection into the project is preferred however each application may be assessed on its own merits;
- contribution to export earnings;
- level of imports substituted;
- amount of trade to, from, or within the Cook Islands generated;
- taxes and revenue generated to the Cook Islands or to the island concerned;
- the extent to which the project involves value-added processing of raw materials or adding value to existing services.

PART G. CRITERIA FOR EVALUATION OF FOREIGN ENTERPRISES APPLYING FOR APPROVAL TO CARRY ON BUSINESS IN THE COOK ISLANDS

Paragraph 5 of **Part C** refers to the following criteria:

1. Whether there is a demand for the product or service to be provided.
2. Whether the product or service to be provided is of a kind not currently available in the Cook Islands or in the island concerned.
3. Whether there would be substantial participation by Cook Islanders in the enterprise, either from the commencement of business or within a reasonable time of such commencement.
4. Whether a significant proportion of the employees would be Cook Islanders, either from the commencement of business or within a reasonable time of such commencement.
5. If expatriate employees are needed, whether there is adequate provision for the training of Cook Islanders to replace such employees within a reasonable time of the commencement of business.
6. Whether the proposed activity involves innovations, new processes or products, or new skills and technology.
7. Whether a significant proportion of financing for the enterprise would be sourced from outside the Cook Islands.
8. Whether a significant proportion of the capital expenditure proposed in relation to the enterprise would be spent on businesses in the Cook Islands.
9. Whether the activities concerned would be carried out in an island other than Rarotonga.
10. Whether the activities concerned would generate a demonstrable net economic benefit to the Cook Islands or to at least one island in the Cook Islands (evaluated according to **Part F**).
11. Whether the activities concerned would be carried out at suitable sites.

12. Whether the activities concerned would have a significant adverse effect on the social and cultural fabric of the Cook Islands, or the island or community where the activities would be carried out.
 13. Whether non-Cook Islanders who are the principals behind the enterprise, or who would be directing or managing the enterprise, are fit and proper persons to carry on business or (as the case may be) to direct or manage a business in the Cook Islands, taking into account factors such as the following:
 - Previous investment and business experience;
 - Previous business successes and failures;
 - Current business and investment interests;
 - Financial status;
 - Curriculum vitae;
 - Results of an Interpol check on the person.
 14. Other criteria as considered appropriate by the Board, in light of its objectives and functions.
-