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ACT NO. 1 OF 1999



I assent.

[L.S.]

K. K. T. MARA
President

[19 March 1999]

AN ACT

TO FACILITATE AND REGULATE FOREIGN INVESTMENT IN THE FIJI ISLANDS

ENACTED by the Parliament of the Fiji Islands—

Part 1—PRELIMINARY

Short title

1. This Act may be cited as the Foreign Investment Act 1999.

Commencement

2. This Act commences on a date appointed by the Minister and published in the *Gazette*.

Interpretation

- 3.—(1) In this Act, unless the contrary intention appears—

“business” includes a business not carried on for profit but does not include a business carried on by a charitable trust;

“certificate” or “Foreign Investment Certificate” means a Foreign Investment Certificate granted under Part 2;

“Chief Executive” means the Chief Executive of the Fiji Trade and Investment Board appointed under section 8 of the Fiji Trade and Investment Board Act (Cap. 221);

“foreign investor” means an enterprise, other than a national enterprise, engaged or intending to be engaged in carrying on business in a relevant activity in the Fiji Islands;

“national enterprise” means—

- (a) the State or an authority of the State including a government entity as described in the Public Enterprise Act, 1996;
- (b) an enterprise in which—
 - (i) to the extent that the enterprise is constituted by, or includes, a natural person or natural persons – the person or each of the persons is a citizen; and
 - (ii) to the extent that the enterprise is constituted by, or includes, a corporation or corporations – the corporation or each of the corporations is wholly-owned by a person who is, or persons each of whom is, a citizen;

“prohibited activity” means an activity that—

- (a) is prohibited under a law of the State; or
- (b) if carried on in the area or location where the foreign investor concerned proposes to carry it on, would be prohibited under a law of the State;

“register” means the Register of Foreign Investment Certificates kept under section 9;

“relevant activity” means an activity set out in the publication entitled Fiji Standard Industrial Classification based on the United Nations International Standard Industrial Classification of All Economic Activities (ISIC) as amended from time to time;

“reserved activity” means a relevant activity prescribed under section 5;

“restricted activity” means a relevant activity prescribed under section 6;

“Secretary” means the Permanent Secretary to the Minister.

(2) For the purposes of this Act, a person is taken to be associated with a foreign investor if—

- (a) the foreign investor is a company and the person is a director or secretary of the company; or

- (b) the foreign investor is a partnership or an association of persons and the person is one of the partners or one of those persons.

Part 2—FOREIGN INVESTMENT CERTIFICATES

Certification

4.—(1) A foreign investor must not carry on business in a relevant activity in the Fiji Islands unless the Chief Executive has granted the foreign investor a Foreign Investment Certificate under this Part and the certificate remains in force.

(2) A certificate granted to a foreign investor under this Part does not relieve the foreign investor, or any person associated with the foreign investor, from compliance with the laws of the State, and compliance of the foreign investor, and of each person associated with the foreign investor, with those laws is deemed to be a condition of every certificate granted under this Part.

(3) The grant of a certificate to a foreign investor under this Part does not entitle the investor to any concession, incentive or assistance for which the investor may be qualified.

Reserved activities

5.—(1) The Minister may prescribe relevant activities that are reserved for national enterprises.

(2) The Secretary must, on or before the expiration of 2 years from the date of commencement of this Act, and regularly thereafter, review the list of reserved activities.

(3) Following a review under subsection (2), the Secretary must recommend to the Minister whether any additions or variations should be made to, or any deletions made from, the list of reserved activities.

(4) A certificate must not be granted to a foreign investor permitting the foreign investor to carry on business in a reserved activity.

Restricted activities

6.—(1) The Minister may prescribe relevant activities in which a foreign investor may carry on business subject to the foreign investor satisfying a condition or conditions specified in relation to those activities.

(2) The Secretary must, on or before the expiration of 2 years from the date of commencement of this Act, and regularly thereafter, review the list of restricted activities.

(3) Following a review under subsection (2), the Secretary must recommend to the Minister whether any additions or variations should be made to, or any deletions made from, the list of restricted activities.

Application for certificate

7.—(1) A foreign investor may apply to the Chief Executive for a certificate under this Part.

(2) An application under subsection (1) must—

- (a) be in the prescribed form;
- (b) contain the prescribed particulars;
- (c) notify the Chief Executive of an address in the Fiji Islands for the receipt of notices by the foreign investor; and
- (d) be accompanied by such documents (if any) and fee as are prescribed.

(3) If, at any time after the making of an application under subsection (1), there is a change in the address notified under paragraph (2)(c) or in any other information supplied to the Chief Executive under subsection (2), the foreign investor must notify the Chief Executive in writing of the change within one month of the date of the change.

(4) The Chief Executive must grant an application made under subsection (1) unless—

- (a) the foreign investor proposes to carry on business in a reserved activity or in a prohibited activity;
- (b) the foreign investor proposes to carry on business in a restricted activity and, in the opinion of the Chief Executive, the foreign investor does not or will not satisfy any condition imposed under subsection (5);
- (c) in the opinion of the Chief Executive, the application is incorrect or misleading or does not otherwise comply with this Act or the regulations;
- (d) the foreign investor or any person associated with the foreign investor is an undischarged bankrupt, is under management or is in receivership or liquidation under the law of the State or any other country; or
- (e) the Chief Executive has reasonable grounds for believing that the application is not genuine,

in any of which cases the Chief Executive must not grant the application.

(5) If an application under subsection (1) relates to a restricted activity, the grant by the Chief Executive of the application must be made subject to relevant conditions.

(6) Written notice of the grant or refusal of an application under this section must be given to the foreign investor within 15 days of the making of the application.

(7) If an application under this section is refused, or a certificate is granted in terms other than those applied for, the notice under subsection (6) must state the grounds of the refusal, or of the grant of the certificate in terms other than those applied for, as the case may be.

Certificate

8.—(1) A Foreign Investment Certificate must—

- (a) be in the prescribed form;
- (b) set out the name of the foreign investor and the nature of the activity in respect of which the certificate is granted; and
- (c) if the certificate is granted in respect of a restricted activity—specify any conditions imposed under section 7(5) relating to the carrying on of business in that activity.

(2) If—

- (a) a foreign investor has been granted a certificate permitting the foreign investor to carry on business in an activity; and
- (b) the activity subsequently becomes a reserved activity,

the foreign investor may continue to carry on business in the activity as if it were not a reserved activity.

(3) If—

- (a) a foreign investor has been granted a certificate permitting the foreign investor to carry on business in an activity; and
- (b) the activity subsequently becomes a restricted activity,

the foreign investor may continue to carry on business in that activity as if it were not a restricted activity.

(4) If—

- (a) a foreign investor has been granted a certificate permitting the foreign investor to carry on business in a restricted activity; and
- (b) a condition specified in relation to that activity is subsequently altered,

the foreign investor may continue to carry on business in that activity in accordance with the condition or conditions specified in the certificate.

(5) If—

- (a) a foreign investor has been granted a certificate permitting the foreign investor to carry on business in an activity; and
- (b) the activity subsequently becomes a prohibited activity,

the foreign investor must stop carrying on business in that activity within—

- (c) 12 months after the date on which the activity became prohibited; or
- (d) such shorter period as the Chief Executive fixes, having regard to the special circumstances of the case,

and the certificate of the foreign investor ceases to be in force at the end of that period.

Register of certificates

9.—(1) The Chief Executive must keep a register to be known as the Register of Foreign Investment Certificates, in which the Chief Executive must enter particulars of—

- (a) every certificate granted under this Part; and
- (b) every certificate cancelled under this Part.

(2) If a certificate has been granted in respect of a restricted activity, particulars must be entered in the Register of the condition or conditions specified in the certificate relating to the carrying on of business in that activity.

(3) The Register, or a document purporting to be, or to be a copy of, or an extract from, the Register is *prima facie* evidence of the matters contained in it.

(4) Any person may, on payment of the prescribed fee, obtain a copy of—

- (a) a Foreign Investment Certificate; or
- (b) an extract from the Register.

Register open for inspection

10. The Register must be open for inspection during normal business hours.

Change in ownership of foreign investor

11.—(1) If a change occurs in the ownership or shareholding of a foreign investor that has been granted a certificate (other than a foreign investor that is a public company and is listed on a stock exchange), the investor must, within 14 days of the date of the change, notify the Chief Executive of the change.

Penalty: \$5,000

(2) If, as a result of a change in the shareholding or beneficial ownership of a national enterprise that carries on business in a relevant activity in the Fiji Islands, the national enterprise becomes a foreign investor, it must, within 14 days of the change, apply for a certificate under this Part.

(3) A certificate granted to a foreign investor is not transferable to any other person or body.

Variation

12.—(1) A foreign investor granted a certificate may apply to the Chief Executive, in the prescribed form, for a variation of—

- (a) the business carried on by it; or
- (b) any other term or condition of the certificate.

(2) The Chief Executive must consider an application under subsection (1) as if it were an application for a certificate under this Part.

Cancellation of certificate

13. If —

- (a) the Chief Executive is satisfied that a foreign investor—
 - (i) obtained a certificate by fraud, misrepresentation, misstatement or omission;
 - (ii) is in breach of the terms or conditions of a certificate;
 - (iii) is otherwise in breach of this Act;
 - (iv) has ceased to carry on business in the activity in respect of which a certificate was granted; or
 - (v) has not started to carry on business in that activity within 12 months after the grant of a certificate; or
- (b) circumstances arise which would require the Chief Executive not to grant a certificate under section 7(4)(d),

the Chief Executive may, by written notice to the foreign investor, cancel the certificate of the foreign investor from a date not earlier than 28 days after the date of the notice.

Part 3—INVESTMENT GUARANTEES

Investment guarantees

14.—(1) A foreign investor has the same protection under section 40 of the Constitution against compulsory acquisition of property as any other person.

(2) Subject to the laws of the State relating to taxation and exchange control, a foreign investor may—

- (a) remit earnings overseas and repatriate capital; and
- (b) remit amounts overseas that are necessary to meet payments of—
 - (i) principal, interest and service charges; or
 - (ii) the costs of other obligations incurred overseas,

at the exchange rate prevailing at the time of remission or repatriation.

Part 4—APPEAL TO MINISTER

Appeal to Minister

15.—(1) In this section—

“reviewable decision” means—

- (a) a refusal of the Chief Executive to grant a certificate under Part 2;
- (b) the grant by the Chief Executive of a certificate under Part 2 on a condition, or on conditions, to which the foreign investor concerned does not agree; or
- (c) the cancellation of a certificate by the Chief Executive under section 13.

(2) A foreign investor in respect of which a reviewable decision is made may, within 28 days of the making of that decision, appeal to the Minister.

(3) An appeal under subsection (2)—

- (a) must be in writing;
- (b) must set out the grounds of the appeal; and
- (c) must be accompanied by the prescribed fee.

(4) The Minister must, upon receipt of an appeal under subsection (1), refer a copy of it to the Chief Executive and request a statement of reasons from the Chief Executive for the reviewable decision.

(5) The Chief Executive must, within 14 days of receiving a copy of an appeal under subsection (4), give to the Minister a statement in writing setting out the reasons for the reviewable decision.

(6) Within 7 days of the receipt by the Minister of the Chief Executive’s statement under subsection (5), the Minister must—

- (a) affirm the reviewable decision;

- (b) vary the reviewable decision; or
- (c) set aside the reviewable decision and make a new decision in substitution for it.

Part 5—MISCELLANEOUS

Prohibitions on foreign investors

16. A foreign investor must not—
- (a) carry on business without a Foreign Investment Certificate;
 - (b) subject to section 8(5), carry on business in a prohibited activity;
 - (c) subject to subsection 8(2), carry on business in a reserved activity; or
 - (d) fail to comply with the terms or conditions of a Foreign Investment Certificate.

Penalty: \$50,000.

False statements

17. A person must not, without reasonable excuse, furnish a statement or provide information for the purposes of this Act that is false or misleading in a material particular.

Penalty: \$20,000.

Delegation

18.—(1) The Secretary may, in writing, delegate to a Deputy Secretary all or any of the Secretary's powers under this Act or the regulations.

(2) The Chief Executive may, in writing, delegate to the Deputy Chief Executive of the Fiji Trade and Investment Board all or any of the Chief Executive's powers under this Act or the regulations.

Regulations

19. The Minister may make regulations prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Transitional

20. An enterprise that, at the commencement of this Act, is a foreign investor carrying on business in a relevant activity in the Fiji Islands must, within 12 months of the commencement of this Act, apply to the Chief Executive for a Foreign Investment Certificate under Part 2.

Passed by the House of Representatives this 27th day of November 1998.

Passed by the Senate this 1st day of March 1999.