

ACT NO. 28 OF 2016

I assent.

J. K. KONROTE
President

[12 July 2016]

AN ACT**TO AMEND THE FOREIGN INVESTMENT ACT 1999**

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Foreign Investment (Budget Amendment) Act 2016.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

(3) In this Act, the Foreign Investment Act 1999 is referred to as the “Principal Act”.

Section 3 amended

2. Section 3 of the Principal Act is amended by inserting the following new definitions—

““Board” means the Investment Fiji Board established under section 3 of the Investment Fiji Act (Cap. 221);

“Foreign Investment Policy” means the policy made in accordance with section 7A;”

*Section 7 amended***3.** Section 7 of the Principal Act is amended by—*(a)* in subsection (4)—

- (i) inserting “for a certificate” after “The Chief Executive must grant an application”;
- (ii) paragraph *(d)*, inserting “has a criminal record, or” after “associated with the foreign investor”;
- (iii) paragraph *(e)*, deleting “.” and substituting “;”; and
- (iv) inserting the following new paragraphs after paragraph *(e)*—
 - “(f) the foreign investor or the business that the foreign investor proposes to directly or indirectly carry on is contrary to the national interest of the Republic of Fiji; or
 - (g) the foreign investor or the business that the foreign investor proposes to directly or indirectly carry on does not comply with the Foreign Investment Policy.”;

(b) inserting the following new subsections after subsection (4)—

“(4A) If an application made under subsection (1) falls within one of the exceptions provided in subsection (4)(a) to (f) but the foreign investor or the business that the foreign investor proposes to carry on may be an acceptable foreign investment under the Foreign Investment Policy, the Chief Executive must refer the application for a certificate to the Board for recommendation to the Minister.

(4B) The Board must, upon receipt of a referral under subsection (4A), make a recommendation to the Minister to approve or deny the application for a certificate within 15 working days and the Minister must make a decision to approve or deny the application for a certificate within 15 working days from the receipt of the Board’s recommendation, or at a later date as the Minister may deem necessary.

(4C) The decision made by the Minister under subsection (4B) must be submitted to the Chief Executive and the Chief Executive must—

- (a)* grant the application for a certificate, if the application is approved by the Minister; or
- (b)* refuse the application for a certificate, if the application is denied by the Minister.”; and

(c) by deleting subsection (6) and substituting the following—

“(6) Written notice of the grant or refusal of an application for a certificate under this section must be given by the Chief Executive to the foreign investor within 5 working days of the making of an application for a certificate except in the case where an application for a certificate is referred to the Board for recommendation to the Minister under subsection (4A) in which case the Chief Executive must—

- (a) notify the foreign investor in writing within 5 working days of the making of an application for a certificate that the application has been referred to the Board for recommendation to the Minister; and
- (b) upon receipt of the decision made by the Minister under subsection (4B), notify the foreign investor in writing within 5 working days of the grant or refusal of the application for a certificate.”

New section 7A inserted

4. The Principal Act is amended by inserting the following new section after section 7—

“Foreign Investment Policy

7A.—(1) The Foreign Investment Policy must be prepared by the Ministry responsible for this Act, and approved by Cabinet.

(2) The Foreign Investment Policy must detail—

- (a) the framework for foreign investments in the Republic of Fiji; and
- (b) foreign investments that are acceptable and unacceptable in the Republic of Fiji.

(3) The Ministry responsible for this Act may, from time to time and with the approval of Cabinet, amend the Foreign Investment Policy.”

Section 11 amended

5. Section 11 of the Principal Act is amended by deleting subsection (1) and substituting the following new subsections—

“(1) If a foreign investor that has been granted a certificate (other than a foreign investor that is a public company and is listed on a securities exchange) proposes to change its ownership or shareholding particulars, the foreign investor must make an application to the Chief Executive seeking an approval for a change in its ownership or shareholding particulars before the change is effected.

(1A) 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 Fiji for the receipt of notices by the foreign investor; and

- (d) be accompanied by such documents including statutory declarations (if any), and any fee as prescribed.

(1B) If, at any time after the making of an application under subsection (1), there is a change in the address notified under subsection (1A)(c) or in any other information supplied to the Chief Executive under subsection (1A), the foreign investor must notify the Chief Executive in writing of the change within 20 working days of the date of the change.

(1C) The Chief Executive must approve an application made under subsection (1) except where—

- (a) the Chief Executive has reasonable grounds for believing that the application is incorrect or misleading or does not otherwise comply with this Act or the regulations;
- (b) the foreign investor or any person associated with the foreign investor has a criminal record, or is an undischarged bankrupt, is under management or is in receivership or liquidation under the laws of the Republic of Fiji or of another country;
- (c) the Chief Executive has reasonable grounds for believing that the application is not genuine;
- (d) the foreign investor or the business that the foreign investor proposes to directly or indirectly carry on is contrary to the national interest of the Republic of Fiji; or
- (e) the foreign investor or the business that the foreign investor proposes to directly or indirectly carry on does not comply with the Foreign Investment Policy.

(1D) If an application made under subsection (1) falls within one of the exceptions provided in subsection (1C)(a) to (d) but the foreign investor or the business that the foreign investor proposes to carry on may be an acceptable foreign investment under the Foreign Investment Policy, the Chief Executive must refer the application to the Board for recommendation to the Minister.

(1E) The Board must, upon receipt of a referral under subsection (1D), make a recommendation to the Minister to approve or deny the application within 15 working days and the Minister must make a decision to approve or deny the application within 15 working days from the receipt of the Board's recommendation, or at a later date as the Minister may deem necessary.

(1F) The decision made by the Minister under subsection (1E) must be submitted to the Chief Executive and the Chief Executive must—

- (a) approve the application, if the application is approved by the Minister; or
- (b) refuse the application, if the application is denied by the Minister.

(1G) Written notice of the approval or refusal of an application under this section must be given by the Chief Executive to the foreign investor within 5 working days of the making of an application except in the case where an application is referred to the Board for recommendation to the Minister under subsection (1D) in which case the Chief Executive must—

- (a) notify the foreign investor in writing within 5 working days of the making of an application that the application has been referred to the Board for recommendation to the Minister; and
- (b) upon receipt of the decision made by the Minister under subsection (1E), notify the foreign investor in writing within 5 working days of the approval or refusal of the application.

(1H) Any person who fails to comply with this section shall be liable upon conviction to a fine not exceeding \$50,000.”

Section 13 amended

6. Section 13(1)(a) of the Principal Act is amended by—

- (a) in subparagraph (iii), deleting “or” after “;”;
- (b) in subparagraph (iv), deleting “or”; and
- (c) inserting the following new subparagraphs after subparagraph (iv)—
 - “(v) is engaged in any activity outside of which a certificate is granted; or
 - (vi) has failed to obtain prior approval from the Chief Executive for a change in its ownership or shareholding particulars in accordance with section 11(1); or”

Section 13A amended

7. Section 13A of the Principal Act is amended by—

- (a) inserting the following new subsection after subsection (1)—

“(1A) If a foreign investor engages in any activity or business outside of which a certificate is granted, the Attorney-General may apply to the High Court for an order forfeiting to the State any asset, interest, share or property derived from or used for the purpose of engaging in such activity or business.”; and
- (b) in subsection (2), by inserting “or (1A)” after “subsection (1)”.

Passed by the Parliament of the Republic of Fiji this 8th day of July 2016.