

Kiribati

Foreign Investment Act 2018 (2018)

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

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Foreign Investment Act 2018

REPUBLIC OF KIRIBATI

FOREIGN INVESTMENT ACT 2018

No. 14 of 2018

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SCHEDULE

An Act to provide for the registration, regulation and promotion of foreign investment in Kiribati and for connected purposes.

Commencement date: 2018

MADE by the Maneaba Ni Maungatabu and assented to by the Beretitenti.

PART I – PRELIMINARY MATTERS

1. Short title

This Act may be cited as the Foreign Investment Act, 2018.

2. Commencement

This Act commences on a date to be appointed by the Minister by notice.

3. Interpretation

In this Act, unless the contrary intention appears -

"approval" means approval of an investment proposed by a foreign investor under this Act;
"business activity" means any activity carried out in Kiribati -

- (a) that involves the commitment of capital, the expectation of gain or profit and the assumption of risk; and

- (b) that creates a contribution to the economic development of Kiribati,

"commence" has the meaning assigned to it under section 18(3); "disguised foreign investment" means a foreigner carrying on business in Kiribati under the guise of a local spouse or being an employee(s) of a local; "enterprise" means any organised business undertaking that is legally established in Kiribati or any state other than Kiribati; "expansion of investment", for the purposes of the definition of "investment", includes -

- (a) a major expansion of facilities beyond the original investment plan or size of a pre-existing investment so as to require new approvals under applicable law; and

- (b) an expansion of an investment into new business sectors not included in the original proposal or the previous activities of an investment,

"fair market value" means the estimated amount for which a property exchanges on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction;

"foreign investor" means -

- (a) a natural person who is not a citizen of Kiribati that has made or is seeking to make an investment into Kiribati; or

- (b) a company incorporated, registered or constituted in accordance with the laws of -

- o (i) Kiribati; or

- o (ii) any country other than Kiribati, that is not directly or indirectly owned or controlled by a citizen of Kiribati and that has made or is seeking to make an investment into Kiribati,

"investor" when used without a reference to foreign or Kiribati citizen, includes both foreign and Kiribati investors;

"investment" means -

- (a) any enterprise -

- o (i) lawfully established, acquired or expanded by an investor in accordance with the laws of Kiribati; or

- o (ii) that carries on a business activity for the purpose of generating revenue in trade, commerce or industry, and includes any trade, profession or calling; or

- (b) any enterprise in Kiribati that an investor is seeking to -

- o (i) establish, acquire, merge with or expand, whether through the constitution, maintenance or acquisition of a juridical person inside Kiribati or outside Kiribati; or

- o (ii) merge with another enterprise inside Kiribati or outside Kiribati.

· (c) It does not include aid and development projects funded by foreign donors, negotiated, arranged or contracted by or through the Government of Kiribati unless the project contractor is, at any time up to the completion of the project, registered by any other circumstances,

"Investment Promotion Division" means the Kiribati Investment Promotion Division referred to in section 6;

"Minister" means the Minister responsible for the administration of this Act;

"Ministry" means the Ministry administering investment matters;

"measure" means any form of legally binding act of State directly affecting an investor or an investment, and includes any law, regulation, procedure, requirement, judicial decision, binding executive decision and agreement, only if excluded from the scope of this Act;

"prescribed" means prescribed by regulation;

"prohibited list" means the list of activities in Schedule 3;

"Registrar" means an officer appointed under section 6(2) and includes Deputy Registrar, officer or officers appointed under the same section;

"reserved list" means the list of activities in Schedule 1;

"restricted list" means the list of activities in Schedule 2; and

"Secretary" means a Secretary responsible for the administration of this Act.

4. Objects of the Act

The objects of this Act are -

(a) to provide a clear and transparent framework for investment in Kiribati;

(b) to provide for a mechanism for inter-ministerial coordination on regulatory provisions and incentives and support mechanisms for investments;

(c) to promote sustainable economic development and growth through the mobilization and attraction of domestic and foreign investments that -

· (i) enhances the economic development objectives of Kiribati to build a prosperous, industrialised society with adequate direct investment to, among other things, encourage the creation of employment, wealth, technology transfer, capacity building, value addition to natural resources and foreign currency generation;

· (ii) reduces unemployment, poverty and economic inequality in Kiribati;

· (iii) accelerates the growth and diversification of the I-Kiribati economy;

· (iv) facilitates domestic investments, particularly in priority economic sectors; and

· (v) provides for other matters on investment promotion, admission, treatment and management.

PART II - ADMINISTRATION OF ACT

5. Incentives

(1) The Minister may introduce incentives and other support mechanisms -

(a) after consultation with the Minister responsible for any specific economic sector; and (b) with the consent of the Minister responsible for finance, where revenue is involved.

(2) Any incentives introduced shall be consistent with any applicable law as may be required for investments and shall be applicable to all investors, local and foreign, equally and in a non-discriminatory manner.

(3) Any incentive including grants and loans that are specifically designed or funded for local investors and I-Kiribati shall be exempt from the provisions of subsection (2).

6. Administration and implementation of Act

(1) A division in the Ministry known as the Investment Promotion Division of Kiribati is established by this section which is responsible for the administration of this Act.

(2) The Minister may appoint -

(a) an officer qualified to occupy the position of a Registrar of Foreign Investment and; (b) one or more officers suitably qualified to occupy the position of -

- (i) a Deputy Registrar; and
- (ii) other officer or officers

who are under an Investment Promotion Division and are public civil servants as designated officers to administer and implement the provisions of this Act.

(3) An Officer or Officers appointed under subsection (2) are subject to the direction of the Secretary when performing their functions.

(a) receive and consider the applications for investment under this Act; (b) to approve or disapprove applications for investment under this Act in consultation with the Secretary; (c) issue a certificate of approval of investment with conditions as may be prescribed; (d) to keep records of applications and certificate of registrations issued to foreign investors; (e) to assist in implementing this Act by exercising or performing the powers or functions conferred or imposed on him by this Act; (f) to promote both foreign and domestic investment by identifying specific projects and inviting interested investors for participation in those projects; (g) to undertake, in Kiribati and outside Kiribati, promotional activities to attract foreign investments that are beneficial to the economy and development objectives of Kiribati; (h) to provide support services to investors and investments after establishment in order to assist them in their on-going relations with the Government; (i) to assess economic sectors and investment proposals and projects for investment potential, opportunities and social economic impact, including local and public sector participation; (j) to undertake periodic reviews on investment policies and trends in Kiribati and globally in achieving the overall objects of the Act, including the review of levels of domestic and foreign investment in different sectors and the development benefits of these investments; (k) to investigate any breaches under this Act including where local enterprises appears to be a disguised foreign investment and to make recommendations to the Attorney-General when it has reasons to believe that a provision of this Act has been breached; (l) to recommend updates to the Reserved List, Restricted List and Prohibited List at least every three years in consultation with the relevant Government Ministries and the private sector; (m) to review compliance with any approval, registration requirements and conditions by investors and investments; (n) to coordinate the investment related functions of commercial representatives; (o) to award compensation under section 24; and (p) any other matter or matters that the Registrar may require.

(5) If the Registrar is considering any application or exercising any of its functions under this Act with respect to the Line and Phoenix Islands, he must consult with the Ministry responsible for Line and Phoenix Islands and any other Local relevant authorities in the Line and Phoenix Islands.

(6) The Registrar may, within 2 months after the end of the financial year, make an annual report on the administration of this Act, status of the foreign investment in Kiribati and give a copy of the report to the Minister who shall as soon as practicable lay it before Cabinet.

7. Integrated client service facility

(1) The Registrar may establish and manage within its operations an integrated client service facility for potential investors which may -

(a) facilitate the sharing of information between the Government, investors and the public; (b) facilitate the application and approval process for required permits and licenses in relation to investments; and (c) facilitate the timely receipt of Government approvals for permits, registrations, licenses and other documents.

(2) An integrated client service facility may provide a list of various items including licences, permits and approvals issued or made under this Act or any other law which may be applied through the integrated client service facility.

(3) An investor may, among others, apply for a licence, permit or approval of investment through an integrated client service facility.

8. Confidentiality

(1) The Registrar, must not -

(a) disclose any information that may come into his possession and considered to be confidential; (b) use any information in a manner that is inconsistent with the Registrar's duty and responsibility to the Division or duty to a foreign investor to act fairly and impartially; or (c) engage in any activity that is inconsistent with the Registrar's appointment as a designated officer of Investment Promotion Division.

PART III - INVESTORS, ECONOMIC SECTORS AND BUSINESS ACTIVITIES

9. Reserved List

(1) The business or economic activities listed in Schedule 1 is to be reserved for citizens of Kiribati exclusively, and no approval may be given under this Act, or any other law, for a non-citizen to own or participate in any business or venture that includes any of the activities in the Reserved List.

(2) Nothing in subsection (1) is to prevent a non-citizen from being employed in a business provided that he holds the right to employment under the relevant laws in Kiribati.

(3) Regulations may clarify any of the activities referred to in the Reserved List by the inclusion of further description or detail, which is to be treated as to form part of the Schedule.

10. Restricted List

The foreign investment may carry on the business or economic activities listed in Schedule 2 provided it satisfies the conditions prescribed.

11. Prohibited List

The business or economic activities listed in Schedule 3 are strictly prohibited.

12. Amendment of schedules

The Minister, after consultation with Cabinet, may by order amend any or all of the lists in schedule 1, schedule 2 and schedule 3.

13. Treatment of existing investments after reservation of economic sectors and business activities

(1) A reservation of an economic sector or business activity under Schedule 1 is effective from the date as may be prescribed.

(2) Despite anything to the contrary in this Act, an investor who had lawfully invested in an economic sector or business activity before the sector or activity has been reserved under the Schedule 1 is entitled to maintain his or her investment after the effective date of the reservation of the sector or activity.

PART IV - INVESTMENTS

14. Application for approval of investments

- (1) A foreign investor must not invest in Kiribati without a valid certificate issued under this Act.
- (2) A foreign investor seeking to invest in Kiribati may apply to the Registrar for approval of the proposed investment in the prescribed form and manner and accompanied by a prescribed fee.
- (3) The Registrar may consider and determine each application within 30 working days whether to refuse the application or issue a certificate.
- (4) If he or she forms the opinion that there are issues concerning the application that requires the expertise advice of the relevant Government Ministries, he or she may seek their expertise advice and for the Government Ministries to respond back within 10 working days.
- (5) The Registrar must also consider and determine the application accordingly without responses under subsection (4) only if he or she is able to make an informed decision.
- (6) Where the determination of an application is deferred, the Registrar must convey the reasons to the applicant before the expiration of 30 working days under subsection (3).
- (7) A certificate issued under this Act is to be endorsed with the list of the prescribed conditions.
- (8) Application where the total capital input to the foreign investment is \$250,000 or below may be approved by the Registrar in consultation with the Secretary.

15. Cabinet to approve application

- (1) The Registrar shall submit the application to Cabinet for approval where the total capital input to the foreign investment is more than \$250,000.00.
- (2) Upon receipt of the application, Cabinet may -
 - (i) approve the application with conditions as may be prescribed considering the recommendations from the Registrar; (ii) refuse to approve the application and provide reasons for refusal; or (iii) send it back to the Registrar with recommendations for further action as required.

16. Issue or refusal of certificate

- (1) Subject to subsection (2), the Registrar may consider each application.
- (2) The Registrar may not issue a certificate in respect of a business activity -
 - (a) that is a restricted activity which does not meet the conditions applicable to a business activity; or (b) if the applicant has provided false statements; or (c) where the applications are incomplete; or (d) any other grounds which the Registrar considers necessary.

(3) The Registrar must inform an unsuccessful applicant in writing of the grounds upon which his application has been refused and inform the applicant his right of appeal under section 28.

17. Certificate

(1) A Foreign Investment Certificate signed by the Secretary shall -

(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 as may be prescribed relating to the carrying on of business in that activity.

18. Duration of certificate

(1) Subject to section 19, a certificate is valid from the date of its issue until the termination of the business activity for which it was issued.

(2) A certificate is cease to be valid if the business activity for which it is issued does not commence within 1 year of the date of issue.

(3) For subsection (2), commence business means conducting activities appropriate to the carrying out of the particular business.

19. Cancellation of certificate

(1) A certificate may be cancelled by the Registrar if -

(a) the application contains any material misrepresentation or false statement; (b) the foreign investor carries on a prohibited activity or a restricted activity; or (c) any prescribed conditions are breached; or (d) if a foreign investor commits an offence under this Act.

20. Holder to be heard

No certificate under this Act shall be cancelled without the certificate holder first having been given an opportunity to be heard by the Registrar.

PART V - RIGHTS AND OBLIGATIONS OF INVESTORS

21. Compliance with all applicable laws

An investor must carry out their activities at all times in full compliance with all the applicable laws of Kiribati.

22. National Treatment

(1) During implementation of investment and entrepreneurial activities, rights and guarantees of foreign investors may not be less than rights and guarantees enjoyed by natural and legal persons of Kiribati, except for cases defined by legislation relevant to international obligations.

(2) The rights and guarantees referred to in subsection (1) include treatment in relation to the establishment, expansion and operation of their investments.

23. Expropriation

Any investments in Kiribati shall not be nationalised, expropriated or subjected to any indirect measures having an equivalent effect except by provision of a law, in the public interest, for a public purpose, on a non-discriminatory basis, taken in accordance with applicable requirements and procedures and accompanied by prompt and full compensation.

24. Payment of compensation

(1) Unless provided for in other laws of Kiribati, the just compensation required for an expropriation of investment is subject to subsection (2), once it is determined it is -

(a) normally assessed in relation to the fair market value of the expropriated investment immediately before the expropriation took place; and (b) paid promptly in a freely convertible currency.

(2) The just compensation is based on an equitable balance between the public interest and the interest of those affected having regard to all relevant circumstances, including the -

(a) fair market value; (b) profit of the investment to date of the expropriation; (c) capital costs of the investment; (d) current and past use of the property; (e) history of its acquisition; (f) purpose of the expropriation; and (g) duration of the investment.

(3) The assessment of fair market value may not reject any change in value occurring because the intended expropriation had become known earlier.

(4) Compensation must include simple interest as may be prescribed -

(a) commencing on the date the act of expropriation occurs; and (b) ending on the date the whole compensation amount is paid.

25. Right of review concerning expropriation and compensation

An investor affected by a nationalisation or expropriation may seek constitutional or other remedies under the laws of Kiribati, or resort to other methods of resolution of disputes provided for in any agreement between the investor and the Government.

26. Transfer of funds

(1) A foreign investor may transfer into and outside Kiribati funds relating to his or her investment subject to the laws of Kiribati.

(2) The funds referred to in subsection (1), include -

(a) the initial capital and additional amounts to maintain or increase the investment; (b) the profits, dividends, royalties and income yielded by an investment; (c) the funds in repayment of loans and interests of loans related to an investment; (d) the compensation paid under this Act; (e) proceeds from the total or partial sale or liquidation of an investment; (f) earnings and other remuneration of personnel engaged from abroad in connection with an investment; and (g) payments arising out of the settlement of a dispute between the investor and another party in Kiribati.

(3) Despite subsection (1), the Government may delay or prevent a transfer and any affected person may seek any redress through the judicial process, or through a fair, non-discriminatory and good faith application of measures, to delay or prevent a transfer -

(a) to protect the rights of the creditors in the event of actual or anticipated bankruptcy; (b) to ensure the compliance with judgments concerning criminal offences; (c) to ensure the compliance with tax obligations; (d) to ensure compliance with social security, public retirement, or compulsory savings schemes and severance entitlements of employees; (e) to comply with lawful administrative decisions and facilitate execution of judicial judgments; (f) in response to serious or exceptional balance of payments or external financial difficulties, or the anticipated financial risk; or (g) in exceptional circumstances, to prevent movements of capital that causes or threaten to cause serious difficulties for macroeconomic management. including monetary or exchange rate policies.

PART VI - APPEAL

27. Investment Appeal Panel

(1) An Investment Appeal Panel is established by this section.

(2) The Investment Appeal Panel shall consist of the following members -

(a) a Chairperson; (b) a person who is qualified as a lawyer; (c) a representative of the private sector; and (d) a representative of a non-government organisation, who shall be appointed by notice by the Minister.

(3) The Minister may appoint members of the Investment Appeal Panel on terms and conditions to be prescribed.

(4) The Chairperson and other members of the Investment Appeal Panel shall hold office for three years and be eligible for re-appointment.

(5) The Minister may at any time terminate the appointment of a member who has been found guilty of -

(a) any misconduct, default or breach of trust in the discharge of that member's duties; or (b) an offence of a nature as renders it desirable that the member's appointment be terminated.

(6) The Investment Appeal Panel may appoint as advisor for a specific appeal a person whose specialised knowledge or experience is that the person must be able to assist the Investment Appeal Panel in its deliberations.

(7) Allowance and expenses of members of the Investment Appeal Panel incurred by them in respect of their duties may be paid out of the Consolidated Fund at a rate as the Minister may from time to time prescribe.

(8) If a member of the Investment Appeal Panel has any pecuniary interest whether it be direct or indirect and is present at a meeting, shall as soon as practicable before the commencement of the meeting, disclose to the member the fact and nature of his interest, and shall not take part in the consideration or discussion of the appeal.

(9) The Investment Appeal Panel may conduct its own proceedings according to its own rules as may be prescribed by regulation.

28. Right of appeal

(1) An investor who is dissatisfied with the decision of the Registrar may apply to the Investment Appeal Panel for -

(a) a review of a decision of the Registrar with regard to that investor's investment or proposed investment; or (b) an order where the Registrar does not issue a decision within the required time limit.

(2) An application for review under subsection (1) must -

(a) be in writing; (b) specify the reasons for making the application; and (c) be made within three months from the date of the decision.

(3) An applicant for a review under subsection (1) must pay a sum as may be prescribed, which may be forfeited if it is determined that the application was frivolous.

(4) If an application for a review is made under this section, the decision of the Registrar is suspended until the appeal is heard and determined by the Investment Appeal Panel.

(5) The Investment Appeal Panel is to make a decision under this section within 14 working days of the date of submission of an application for review under subsection (2).

(6) The Investment Appeal Panel may dismiss an application for review where it considers:

(a) the application is vexatious; or (b) that there are no reasonable prospects of making a decision.

(7) The Investment Appeal Panel may, if it determines that there is a merit in it, order one or more of the following remedies -

(a) recommend the annulment in whole or in part of any unauthorised act or decision, or remedying of any omission, of the Registrar; (b) recommend a re-evaluation of an application, specifying the grounds for a recommendation.

(8) The Investment Appeal Panel must provide to the Applicant and publish written reasons for its decisions.

(9) A person dissatisfied with a decision of the Investment Appeal Panel may appeal against the decision to the High Court.

PART VII — MISCELLANEOUS PROVISIONS

29. Offences

- (1) A foreign investor commits an offence, if he -
 - (a) undertakes, establishes or operates an investment without a valid certificate of registration issued under section 14 or 15; (b) invests in a sector in which an investment is not permitted; (c) changes the nature of the investment in a manner that makes it materially different from the approved investment; or (d) is in breach of any prescribed conditions of his licence.
- (2) A foreign investor commits an offence, if he submits information which the investor -
 - (a) knows to be false, misleading or fraudulent; or (b) does not believe to be true, in relation to any matter required under this Act.
- (3) A foreign investor commits an offence, if he -
 - (a) changes the ownership or control of his or her investment; or (b) transfers any licence, authorisation or concession owned by the investor or investment to another foreign investor.
- (4) A foreign investor who commits an offence under this Act is liable on conviction to a fine of up to \$50,000.00 or imprisonment for a period of up to 10 years or to both.

30. Electronic Documents

- (1) Any provision under this Act or regulations made under it that -
 - (a) requires the filing of documents, or obtaining of information in any form; (b) requires that documents be created or retained; (c) requires documents, records or information to be provided or retained in their original form; (d) issues any permit, licence or approval; or (e) requires payment of any fee, charge or other amount by any method and manner of payment, may be carried out by means of electronic records or in electronic form.
- (2) If the Registrar decides to perform any of the functions under this Act by means of electronic records or in electronic form, the Registrar may specify -
 - (a) the manner and format in which such electronic records shall be filed, created, retained, issued or provided; (b) where electronic records have to be signed, the type of electronic signature required; (c) the manner and format in which such signature shall be affixed to the electronic record, and the identity of or criteria that shall be met by any specified security procedure provider used by the person filing the document; (d) such control processes and procedures as may be appropriate to ensure adequate integrity, security and confidentiality of electronic records or payments; and (e) any other required attributes for electronic records or payments that are currently specified for corresponding paper documents.

31. Regulations

- (1) The Minister may make regulations relating to -

(a) the form of any application, notice, certificate and other document required for the purposes of this Act and the manner for making the application; (b) the organisation, operations and proceedings of a body that may be established under this Act to perform any functions in terms of this Act or as may be delegated to it; (c) any fees to be paid for services provided under this Act; (d) the facilitation of domestic investment in priority economic sectors; (e) the provision of incentives and support mechanisms to investors; (f) any matter which in terms of this Act is required or permitted to be prescribed; and (g) any matter in respect of which the Minister considers necessary or expedient to prescribe in order to achieve the objects of this Act,

32. Repeal of laws

The Foreign Investment Act, 1985 and the Protected Industries Ordinance are repealed.

33. Savings

(1) Despite the repeal of the Foreign Investment Act, 1985 and subject to this Act, any investment contract or permit executed under it and in force at the date of commencement of this Act continues to be in force as if it has been made under this Act.

(2) Anything done under a provision of the repealed Foreign Investment Act, and that could have been done under this Act is deemed to have been done under a corresponding provision of this Act.

SCHEDULE 1

RESERVED LIST ACTIVITY

Description

Related Activities Excluded

Bus transport services for the general public

Urban, super urban and rural regulatory scheduled passenger transportation on land. Services classified here are motor bus and similar services generally rendered on a licence. The services may provide pick up and discharge of passengers at any scheduled stop and are open to any user.

Bus Services for Private schools, hotels, air transport shuttles and buses for private businesses for transporting workers. These services are provided over predetermined routes ,time schedule and restricted category of user

Taxi Transport Services for general public

Motorised taxi-cab services including urban, suburban and interurban. These services are rendered for 3 limited duration of time and to a specific destination

Rental Vehicles

Renting, hiring or leasing services concerning private motor vehicles without operator, principally designed for the transport of persons

Distribution Sector

This include Retailing and wholesaling trade services unless established before the enactment of this Act.

Retailing services of beverages for consumption on premises.

Tour Guide Services

Bird watching tours, Game fishing, diving and surfing Tour guide service activities.

Handicraft Production

This include designing and production of traditional handicraft.

Saw Milling

Facility where logs are cut into timber

Fishing

Artisanal/Coastal/reef fishing Commercial fishing in Kiribati's inshore waters (up to 12 nautical miles)

Traditional "Tibuta" garment designing and production

Garment designing and sewing into "Tibuta" Garment

SCHEDULE 2

RESERVED LIST

Economic Sector

Economic Sub Sector

Conditions

Manufacturing

Salt

Foreign Investor must establish a joint venture with a local partner

Coconut Virgin Coconut Oil

Foreign Investor must establish a joint venture with a local partner

Services

Refuse Disposal Services for recyclable items excluding PET 14 Lead acid batteries and aluminium cans

Services must be supplied through a commercial presence except as regards to consulting

Maritime Services (a) Liner shipping:

Conditional on the granting of a license, the issuance of which is based on such criteria. as the frequency, type, and price of the services proposed, as well as the impact on the services provided by other transporters.

- Licenses granted preferably to carriers owned by Kiribati citizens, and that employ Kiribati citizens, and that conduct training for Kiribati citizens. - Vessels owned and operated by the Kiribati government do not require a license to be granted on the basis of the criteria mentioned above.

- Local agent in Kiribati required.

b) Bulk, tramp, and other international shipping, including passenger transportation.

Local agent in Kiribati required.

Maritime Agency Services

Suppliers of maritime transport services are required to go through a local agent established in Kiribati

aluminium

SCHEDULE 3

PROHIBITED SECTORS

General

Development, production, distribution of nuclear bacteriological and chemical weapons

Construction of polygons for testing nuclear, bacteriological and chemical weapons;

Import of nuclear and hazardous waste from foreign countries for recovery and disposal

Research works related to human cloning

Production of narcotic drugs

Exploitation of wildlife conserved bird species

Activities prohibited by international agreements of Kiribati.

Fishing

Fishing in Conserved areas

Wild Coral Exportation

Turtle hunting

Wild Giant clam harvesting

Berried female & lobster harvesting

Fishing for endangered and marine protected species

Shark

Agriculture

Millionaire salad exportation

Coconut crab harvesting

Logging Coconut bearing trees

EXPLANATORY MEMORANDUM

The Purposes of the Act are:

To provide for the promotion of sustainable economic development and growth through the mobilisation and attraction of foreign and domestic investment to enhance economic development, reduce unemployment, accelerate growth and diversify the economy; to provide for reservation of certain economic sectors and business activities to certain categories of investors; to provide for dispute resolution mechanisms involving investment; and to provide for incidental matters.

Part 1 of the Act comprises the preliminary clauses and contains 4 clauses.

Clause 1 of the Act provides the short title of the proposed legislation. Clause 2 of the Act provides for the commencement date to be appointed by the Minister. Clause 3 sets out important definitions, including 'business activity', 'foreign investor', 'investor' and 'investment'. Clause 4 sets out the Objects of the Act,

Part II of the Act deals with the Administration of the Act.

Clause 5 deals with incentives where it shall be applicable to all investors both local and foreign and shall be dealt with in a non-discriminatory manner. Clause 6 provides for the establishment of the Investment Promotion Division of Kiribati responsible for the Administration of the Act. The Registrar who is under this Division must be appointed to carry out his functions one of which is to receive and consider the applications for investment under this Act. Clause 7 deals with integrated client service facility where an investor may apply for a licence, permit or approval of an investment. Clause 8 deals with confidentiality where the Registrar of the Investment Promotion Division must not disclose information.

Part III deals with investors, economic sectors and business activities.

Clause 9 deals with reserved list where a non-citizen may not own any business that is included in the reserved list. Clause 10 states that the foreign investment may carry on the business or economic activities listed in schedule 2 provided conditions prescribed by regulations are satisfied. Clause 11 states that the business or economic activities listed in Schedule 3 are strictly prohibited. Clause 12 sets out the power of the Minister to amend the schedules by order. Clause 13 deals with treatment of existing investments after reservation of economic sectors and business activities.

PART IV deals with Investments.

Clause 14 and 15 set out the application for approval of investments in the prescribed form and manner. Clause 16, 17, 18, 19 and 20 provide for the issuing, refusal, contents and duration of a certificate, cancellation of certificate and holder to be heard before cancellation of his licence.

Part V provides for the Rights and Obligations of Investors

Clause 21 states that all investors must fully comply with all the applicable laws of Kiribati. Clause 22 provides for national treatment where the rights of foreign investors may not be less than rights and guarantees of natural and legal persons of Kiribati. Clause 23 deals with expropriation. It states that any investments in Kiribati shall not be nationalised or expropriated except by provision of a law in the public interest. Clause 24 provides for payment of compensation for an expropriation of an investment. Clause 25 deals with right of review concerning expropriation and compensation. Clause 26 deals with the transfer of funds.

Part VI deals with Appeal.

Clause 27 states that an Investment Appeal panel shall be established with a Chairperson and a person who is qualified as a lawyer, private sector and a non-governmental organisation. Clause 28 provides for the Right of Appeal where an aggrieved investor shall apply in writing to the Investment Appeal Panel for a review, failing which they may apply to the Court.

Part VII deals with miscellaneous provisions.

Clause 29 deals with offences which are outlined in this clause and including fines. Clause 30 makes provision for the carrying out of the functions under this Act electronically. Clause 31 deals with Regulations making powers of the Minister Clause 32 states that The Foreign Investment Act, 1985 and the Protected Industries Ordinance are repealed. Clause 33 deals with transitional provisions where it is stated that despite the repeal of The Foreign Investment Act, 1985, any investment contract or permit executed therein and in force will continue in force.

Honourable Mr Atarake Nataara Minister of Commerce, Industry and Co-operatives

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