

Tuvalu

FOREIGN DIRECT INVESTMENT ACT (1996)

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FOREIGN DIRECT INVESTMENT ACT

AN ACT TO ENCOURAGE AND FACILITATE PRIVATE FOREIGN DIRECT INVESTMENT IN TUVALU, AND FOR CONNECTED PURPOSES

Commencement [1st September 1996]

1 Short title

This Act may be cited as the Foreign Direct Investment Act.

2 Purpose

The purpose of this Act is to provide a legal framework in Tuvalu to encourage, facilitate, consolidate and streamline direct foreign investment proposals and projects in order to stimulate growth, employment, and productivity in the private sector economy, and to remove discriminatory impediments to foreign direct investment in Tuvalu.

3 Interpretation

In this Act, unless the context otherwise requires —

“Board” means the Foreign Investment Facilitation Board established in accordance with section 4;

“foreign direct investment” shall mean any business enterprise or undertaking for profit where the capital investment for such undertaking is provided in whole, or in part by sources outside of Tuvalu;

“foreign direct investment proposal” or “proposal for foreign direct investment” shall have the meaning ascribed in section 5;

“joint venture” shall mean any foreign direct investment proposal which includes participation by the government, whether active or passive, or whether proposed in the form of a company, contractual arrangements, or otherwise, and which does not include participation by the government;

“private joint venture” shall mean any foreign direct investment proposal which includes participation by a citizen of Tuvalu, or with a statutory corporation, whether active or passive, or whether proposed in the form of a company, contractual arrangements, or otherwise, and which does not include participation by the government;

“Registrar” shall mean the Registrar of Companies appointed pursuant to section 235 of the Companies Act;3

“representative of the private sector” as used in paragraph 4(1)(e) means a person other than a public officer who is actively engaged in a registered private business entity in Tuvalu, and may include persons employed by financial institutions.

4 Establishment of Board

(1) There is hereby established a Foreign Investment Facilitation Board comprised of seven Members as follows —

(a) the Secretary to Government;

(b) the Secretary for the Ministry responsible for finance;

(c) the Attorney-General;

(d) the Registrar; and

(e) three Members appointed by the Minister, two of whom shall be representatives of the private sector.

(2) The Members of the Board referred to in paragraph (1)(e) shall be appointed for a term of not more than two years.

(3) The Secretary to Government shall be the Chairman of the Board, and the Secretary for the Ministry responsible for finance shall be the Deputy Chairman of the Board. The Deputy Chairman shall, in the absence of the Chairman, perform all of the functions of the Chairman.

(4) The Chairman of the Board, or in the Chairman's absence, the Deputy Chairman, shall be the chairman at meetings of the Board, and in the absence of both from any meeting, or any part of a meeting, one of the Board Members shall be appointed by the Board at or during the meeting to be the chairman of that meeting, or part of a meeting.

(5) The Board shall meet whenever required by the Chairman or Minister, or as required by section 5 of

this Act, but in any event not less than once every two months.

(6) In any Board meeting, the attendance of a majority of all Board Members shall be required to constitute a quorum.

(7) Each Board Member shall have one vote. Questions arising at a Board meeting shall be resolved by a simple majority of the votes of the Board Members present and voting except that in the event of an equality of votes, the chairman of the meeting or part of a meeting shall have a second and casting vote.

(8) The Board shall have an Office at the Department of Commerce and Industries. The Office of the Board shall be headed by the Registrar, who shall serve as the Secretary to the Board, and who shall ensure that a complete and systematic record of all meetings of the Board is maintained.

(9) The Board may adopt its own rules, consistent with the provisions of this Act, to regulate the conduct of its business.

5 Duties and Responsibilities of the Board

(1) The Board shall have the duty to meet and consider all proposals for foreign direct investment which either —

(a) propose that the government enter into a joint venture for the purpose of carrying out a business activity in Tuvalu, regardless of the form or nature of such proposed joint venture; or

(b) request that the government provide some form of exemption or special dispensation or relief from the laws or regulations of Tuvalu for the purpose of carrying out a business activity in Tuvalu; or

(c) require the granting, issuance, or approval of a licence or permit under an applicable law or regulation.

(2) All proposals for foreign direct investment specified in subsection (1) received by the government shall be forwarded within 14 days of receipt to the Secretary of the Board for the Board's consideration.

(3) In addition to the duties prescribed under subsection (1), the Board shall, upon application in a form approved by the Minister by a party to a private joint venture proposal, provide appropriate assistance and information.

(4) In discharging its duties under subsections (1) and (3), the Board shall consider and take into account such criteria and standards as may be provided to it by the Minister from time to time by way of regulation or written instruction.

(5) The Board shall make recommendations to the Minister from time to time for changes in the law, regulations, or government policy to encourage and facilitate foreign direct investment in Tuvalu.

(6) The Board shall publish, or cause to be published a concise directory for potential foreign direct investment in Tuvalu which shall contain a synopsis of relevant laws and procedures for establishing a business as well as outlining the functions of the Board.

(7) Members of the Board shall keep all information brought before the Board confidential, and shall not disclose any information except as provided by section 7.

6 Powers of the Board

(1) In convening any meeting of the Board, the Chairman shall have the power to require the attendance of any public officer which in the Chairman's opinion is necessary and productive to the Board's consideration of any foreign direct investment proposal at such meeting.

(2) Any public officer attending a Board meeting under subsection (1) shall participate fully at Board meetings, but shall not be entitled to a vote.

(3) The Board, or any committee duly established by the Board, shall, as any foreign direct investment proposal may require, coordinate the exchange of information between Ministries and shall take whatever steps it deems necessary to assist in the timely review and decision-making process for any action to be taken by government with respect to any foreign direct investment proposal.

(4) The Board is authorized to negotiate non-binding terms and conditions for any foreign direct investment proposal under subsection 5(1).

(5) The Board shall have the power to engage any expert as it sees fit to assist it in evaluating any foreign direct investment proposal or otherwise in discharging its duties and responsibilities under this Act.

7 Reports to the Minister

(1) The Board shall make its findings and recommendations with respect to any foreign direct investment proposal under subsection 5(1) in the form of a written report which shall be submitted to the Minister.

(2) Any report made to the Minister under subsection (1) shall contain —

(a) a concise statement of the nature and type of foreign direct investment being proposed, which may in the Board's discretion include written submissions from the proposed foreign direct investment business;

(b) the economic advantages and disadvantages, if any, of the proposed foreign direct investment;

(c) a brief summary of the Board's activities as prescribed under the Act;

(d) a final recommendation with respect to action to be taken in respect of any foreign direct investment

proposal; and

(e) any other information which may be specifically requested by the Minister.

(3) Any report made to the Minister under this section shall be duly signed by the Chairman and the Secretary of the Board, and shall attest to the fact that such report was duly adopted by a majority of the Board in accordance with the Board's procedures.

8 Action to be taken by the Minister or Cabinet

(1) The Minister, upon receiving a report made under section 7, shall consider the Board's findings and recommendations, and shall, if the Minister deems necessary, convene a special meeting of the Board in order to seek clarification or additional information regarding any matter raised in the report.

(2) The Minister, upon being satisfied that the Board's report is complete, and allowing for such additional consultations with the Board provided under subsection (1), shall, within 3 days —

(a) approve the recommendations set out in the Board's report and take whatever actions under the Minister's authority as are necessary to implement the recommendations contained in the Board's report with the assistance of the Board, or any of its Members; or

(b) reject the recommendations set out in the Board's report stating the reasons for such rejection.

(3) In the event that the Board's report contains recommendations for approval of licences, or permits under paragraph 5(1)(c) which are not under the Minister's authority, the Minister shall instruct the Board or any committee or member of the Board to liaise and coordinate with the appropriate Ministry to cause timely approval or licensing for the foreign direct investment proposal.

(4) Where a period of 30 days has lapsed under an instruction given by the Minister under subsection (3), and no action has been taken by the relevant Ministry, the Minister shall refer the matter to Cabinet for consideration.

9 Regulations

(1) The Minister may make regulations, not inconsistent with this Act, prescribing all matters, whether general or specific, which are required or permitted to be prescribed, or are necessary or convenient for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), regulations may be made for or in respect of all or any of the following matters —

(a) types of foreign direct investment which are to be specifically encouraged; and

(b) any fees to be paid to the Board.