

Palau

Chapter 1: Foreign Investment Act (2014)

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Chapter 1: Foreign Investment Act

§ 101. Short title and scope.

This chapter shall be known and may be cited as the "Foreign Investment Act".

§ 102. Definitions.

As used in this chapter, unless the context requires otherwise:

(a) Agri-business means farming engaged in as large scale business, including but not limited to, the production, processing and distribution of farm products and the manufacture of farm machinery, equipment and supplies.

(b) Board means the Foreign Investment Board established under section 104 of this chapter.

(c) Business enterprise means any sole proprietorship, partnership, corporation, trust, joint venture, association, or any other form of business organization established in the Republic for the purpose of carrying on a business. The following shall be exempt from the definition: any foreign entity conducting business activities in the Republic exclusively to fulfill the terms of a contract with the national government; any entity organized exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur athletic competition or for the prevention of cruelty to children or animals, no part of the earnings of which inure to the benefit of any shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or is involved in political campaigning; any entity engaging exclusively in the practice of law or medicine.

(d) Carrying on a business means engaging in any kind of business enterprise, profession or trade, as an owner or part-owner, for the purpose, in whole or in part, of commercial gain or profit.

(e) Chairman means chairman of the Foreign Investment Board established under section 104 of this chapter.

(f) Citizen means a citizen of Palau as defined in Article III of the Constitution of the Republic and includes a business enterprise wholly owned by a citizen or citizens.

(g) Foreign investment means investment made by a non-citizen in a business enterprise.

(h) "Foreign investment approval certificate" means an investment approval certificate granted under section 107 of this chapter.

(i) Grantee means a business enterprise which has been granted a foreign investment approval certificate under this chapter.

(j) Investment means cash or the value of tangible assets subscribed or contributed to the equity capital of or ownership interest in a business enterprise.

(k) Member means a member of the Foreign Investment Board established under section 104 of this chapter.

(l) Non-citizen means any person, natural or legal, who is not a citizen and includes a business enterprise in which a non-citizen owns an interest.

(m) President means the President of the Republic.

(n) Republic means the Republic of Palau.

(o) Secretary means the Secretary to the Foreign Investment Board established under section 104 of this chapter.

(p) Vice Chairman means the Vice Chairman of the Foreign Investment Board established under section 104 of this chapter.

§ 103. Requirement of foreign investment approval certificate.

(a) No non-citizen shall carry on a business enterprise in the Republic, either directly or indirectly, without first obtaining a foreign investment approval certificate in accordance with the provisions of this chapter.

(b) No non-citizen shall acquire any ownership interest or make any investment in an existing business enterprise in the Republic owned wholly by citizens until that business enterprise obtains a foreign investment approval certificate approving such acquisition. For the purposes of this subsection, "ownership interest" or "investment" shall not include the lending of money by a non-citizen to a business enterprise or individual.

(c) No grantee shall carry on any business activity other than the activity approved in its foreign investment approval certificate without first obtaining approval for such new activity.

(d) Subsections (a) through (c) of this section shall not apply to a non-citizen carrying on a business or making a foreign investment in pursuance of a contract or an agreement to which the national government of the Republic is a party. Such business activity or foreign investment shall be governed and regulated by the contract or agreement notwithstanding any provisions of this chapter.

§ 104. Foreign Investment Board.

(a) There is hereby established within the Executive branch of the national government of the Republic a Foreign Investment Board with the following functions:

(1) to review, evaluate, and approve applications and proposals for foreign investment approval certificates;

(2) to monitor and enforce compliance with the terms and conditions of any foreign investment approval certificate granted under this chapter;

(3) to monitor, including spot inspections of business enterprises by the Board or its designees, and enforce compliance with the provisions of this chapter;

(4) to review the procedures and regulations of the Board and advise the President from time to time on matters related to the implementation and improvement of this chapter;

(5) to submit an annual report to the President of the Republic and the Olbiil Era Kelulau on the working of this chapter as prescribed in section 115; and

(6) to undertake such other matters falling within the purview of this chapter as may be entrusted to it by the President.

(b) The Board shall have seven (7) appointed members who shall be residents of the Republic of Palau and who have sufficient knowledge, experience and expertise in the areas of business policy affairs or related fields to efficiently and effectively discharge the functions of the Board under this chapter. They shall be appointed by the President with the advice and consent of the Senate of the Olbiil Era Kelulau, and may be removed by the President only for cause.

(c) The term of office for members of the Board who are initially appointed shall be as follows: two (2) for a period of one (1) year; two (2) for a period of two (2) years; and three (3) for a period of three (3) years. Successors to the first appointees hereunder shall be appointed for terms of three (3) years each. A person who has served as a member of the Board is eligible for reappointment for further terms. Vacancies occurring for reasons other than expiration of term shall be filled by the President by appointment, in same manner as the original appointment was made, for the unexpired term. A member of the Board shall not serve beyond the expiration of his term.

(d) The Board shall elect its own Chairman and Vice Chairman, from among the appointed members. In the absence of the Chairman, the Vice Chairman shall perform all the functions of the Chairman.

(e) The Board shall meet whenever required by the Chairman or the President, but in any event, no less than once every month. In any Board meeting, the attendance of at least four appointed members shall be required to constitute a quorum. The assents of at least three appointed members shall be required for all decisions requiring a vote.

(f) The Chairman shall notify all board members in writing at least three (3) days in advance of any meetings of the board. The notice shall specify the date, time, place and business to be considered at the meeting. A member shall not vote by proxy.

(g) The Board shall have an office. The office of the Board shall be headed by the Board Secretary who shall ensure that a complete and systematic record of all meetings of the Board is maintained.

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

(i) The Board shall adopt and publish specific criteria in furtherance of the provisions of section 107, which criteria shall be made available to all applicants.

§ 105. Local ownership requirement.

The following business activities are reserved exclusively for citizens and business enterprises in which citizens have an ownership interest and shall not be permitted to be undertaken by any business enterprise in which no citizen has an ownership interest; provided, however, that business activities described in subsections (a), (b), (f), (g) and (j), with the exception of fishing for farm-raised fish and maricultured species, are reserved exclusively for citizens and provided further, that the provisions of this chapter shall apply only prospectively, and that non-citizens currently holding business permits issued under 28 PNC Chapter 1 or investment approval certificates for any of the business activities listed below, either solely or jointly with citizens, shall be permitted to continue such business activities only for the current term of their present business permits, with no renewal thereof except in accordance with the provisions of this chapter that do not conflict with any terms regarding extension or renewal included in such permits:

(a) wholesale or retail sale of goods.

(b) all land transportation including bus services, taxi services, and car rentals.

(c) handicraft and gift shops; provided, however, that handicraft or gift shops located on the premises of hotels or at the Palau International Airport shall be exempt from the

prohibition of this section.

(d) bakeries.

(e) bar services not associated and contained within a restaurant or hotel complex. For purposes of this subsection, hotel complex means any lodging facility having at least fifty (50) rooms for the accommodation of guests.

(f) tour guides, fishing guides, diving guides, and any other form of water transportation services.

(g) travel and tour agencies.

(h) operations manufacturing products being produced by wholly Palauan-owned manufacturing enterprises.

(i) equipment rentals for both land and water within the Republic, including equipment for purpose of tourism.

(j) commercial fishing for other than highly migratory species.

(k) any such other businesses as the Board may determine.

§ 106. Minimum investment.

No foreign investment approval certificate shall be issued for carrying on a business enterprise which involves a foreign investment in the Republic of less than five hundred thousand dollars (\$500,000) or which will maintain a work force of which less than twenty percent (20%) of such persons shall be citizens of the Republic.

§ 107. Criteria for evaluation of applications.

(a) An application for a foreign investment certificate shall be evaluated by the Board according to the following criteria:

(1) the economic need for the proposed activity in the Republic;

(2) the extent of its current availability in the Republic;

(3) the likely impact on same or similar activities currently being carried on by citizens;

(4) the overall benefit to the national economy;

(5) the bona fides, financial capacity, experience and expertise of the applicant;

(6) the technical and economic viability of the proposed project;

(7) the overall contributions to the national economy;

(8) the extent of direct and indirect employment generation;

(9) the extent of import earnings or import savings;

(10) the extent of utilization of domestic raw materials and natural resources, including the benefits or adverse impact of such utilization;

(11) the extent of transfer of managerial and technical skills to citizens, including well-defined training programs for achieving such transfer;

(12) the size of the foreign investment as well as the total investment required for the project; and

(13) the impact of the proposed activity upon the social and cultural values upon the environmental integrity of the Republic.

(b) Where the Board is of the view that the capital investment and technical and managerial skills required for a business activity are such as to be within the capacity of citizens, it shall not grant a foreign investment certificate.

§ 108. Application and procedures.

(a) An application for a foreign investment approval certificate shall be made to the Chairman of the Foreign Investment Board, and shall be accompanied by a non-refundable five hundred dollars (\$500) filing fee payable to the National Treasury. The application may be made by any of the following:

(1) the non-citizen who proposes to carry on a business.

(2) the citizen or both the citizen and non-citizen jointly in the case of a joint venture involving investment by both a citizen and a non-citizen.

(3) the business enterprise which will carry on the proposed business or in which the proposed foreign investment will be made.

(b) The application shall be in such form, contain such particulars and shall be made in such number of copies as may be prescribed by regulations issued under this chapter.

(c) The application for a foreign investment approval certificate shall contain the following information:

(1) name of the applicant's business, the form of the business organization under which the applicant proposes to do business, its officers, directors, and proposed and existing stockholders and their citizenship if a corporate form of business, or ownership and management and their citizenship if a form of business other than a corporation.

(2) proposed principal office in the Republic.

(3) purpose, scope, and objective of the business activities to be conducted by the applicant.

(4) the following specific proposals:

(A) for the authorized capitalization, par value if any, proposed or initial issuance of shares of stock, consideration per share of stock issued, subsequent contemplated issuance of stock and the portion of stock to be set aside for purchase by citizens of the Republic equity owners to be allowed citizens of the Republic;

(B) agreeing not to revalue stock shares authorized but not issued that have been set aside for purchase by citizens of the Republic within the first five years after receipt of a business permit unless revaluation is approved by the Board and the President;

(C) agreeing not to restrict in any manner, except by way of pre-emptive rights existing in shareholders or the corporation, the issuance or sale of shares of stock to citizens of the Republic;

(D) agreeing to offer shares of stock at the principal place of business in the Republic, and explaining the procedures required to purchase a share of stock;

(E) setting forth in detail proposed stock purchase programs for employees of the business;

(F) relating to establishing a Republic corporation, the proposed date of incorporation, and such other relevant information thereon as the Board may request.

(5) detailed proposals for management participation to be allowed citizens of the Republic and provisions for the creation of labor-management boards to represent the views of employees at meetings of the Board of Directors and with management on matters affecting employees.

(6) employment preference to be accorded citizens of the Republic and the initial number of citizens of the Republic to be employed.

(7) detailed proposals for training programs for Republic citizen employees in management and in upgrading labor skills.

(8) existing and proposed wage and employment benefit programs.

(9) a listing of total capital anticipated to be invested initially, identifying borrowed funds and their sources for each of the first five years after receipt of the business permit, and from where such capital funds will be obtained.

(10) a detailed investment analysis for each of the first three years of business showing:

(A) anticipated gross revenues and gross expenditures;

(B) anticipated and proposed marketing schemes;

(C) anticipated and proposed use of utilities and infrastructure;

(D) the numbers of employees by nationality in the proposed business activity and the levels of skills required for the operation of the business in the Republic.

(11) specific economic and social programs the applicant intends to implement for the Republic to:

(A) develop and conserve the land and marine resources;

(B) provide community related social services such as beautification programs and libraries.

(12) any additional information which the Board may deem necessary to evaluate the application being filed, or any other information which the applicant may deem appropriate.

(d) In addition to the information required for non-citizen applications under subsection (c) of this section, the application of a non-citizen which is a corporation (including a joint stock company) shall contain the following, unless it has already been filed with the Registrar of Corporations:

(1) a duly certified copy of the articles of incorporation, charter, and bylaws of the corporation;

(2) an affidavit sworn by an authorized officer of the corporation stating the amount of its authorized capital stock on or within sixty (60) days before the date of filing; and

(3) a designation of a person residing within the Republic upon whom process issued under any law of the Republic may be served, and his place of business or residence, and a certified copy of the minutes of the Board of Directors of the corporation authorizing his designation.

(e) In addition to the information required for non-citizen corporations under subsections (c) and (d) of this section, an insurance company organized under the laws of a state, territory or possession of the United States, or of a foreign country, which desires to maintain an office or agent in the Republic, shall file the following:

(1) a certificate of an authorized official, showing that the company is authorized to transact business in the state, territory, possession, or county under whose laws the company is organized; and

(2) a duly certified copy of the last annual statement of the insurance company.

(f) On receiving an application by the Chairman, the Board Secretary shall ensure that the application is complete and contains all the required information. If necessary, the Board Secretary will ask the applicant to complete the application or furnish such additional information as may be required for a proper evaluation of the application. The Board Secretary shall render such assistance and guidance as may be possible to enable an applicant to make a complete application.

(g) Within fifteen (15) days after the application's submission and within at least fifteen (15) days prior to the Board's evaluation of the application as provided in subsections (j) and (k) of this section, the Board Secretary shall forward a copy of the complete application to each of the following and request their comments on the application prior to the Board's action:

(1) the government of each state in which the application proposes to carry on the business.

(2) the President.

(3) Chamber of Commerce.

(4) the Senate, Olbiil Era Kelulau.

(5) the House of Delegates, Olbiil Era Kelulau.

(6) such other persons or agencies as maybe appropriate for an evaluation of the application.

(h) The Board Secretary shall circulate the comments received under subsection (g) of this section, together with a copy of the application, to each member of the Board.

(i) The Board shall evaluate the application in terms of the criteria set out in sections 105 through 107 of this chapter taking into full consideration the comments received under subsection (h).

(j) The Board may call for such additional information, seek such expert advice or make such additional investigation as it may consider necessary for a proper evaluation of the application. The Board may also hold public hearings in appropriate cases. If it considers it necessary, the Board may also afford an opportunity to the applicant to explain his proposal.

(k) If the Board decides on the basis of such evaluation to grant a foreign investment approval certificate, it shall also decide the terms and conditions to be stipulated under the foreign investment approval certificate, which shall include the following:

(1) the scope of the business activity;

- (2) the scope of utilization of domestic raw materials and natural resources;
- (3) the scope of utilization of supplies and services provided by citizens;
- (4) participation by citizens in ownership and management of the business enterprise either from the outset or over a period of time;
- (5) training programs for citizens for transfer of managerial and technical skills;
- (6) duration of business permit or investment approval certificate and its renewal;
- (7) any guarantee to be provided by the non-citizen;
- (8) In order to safeguard the interest of persons doing business with a grantee, the Board may stipulate as a condition of a foreign investment approval certificate that the grantee shall, throughout the period of its validity, maintain a stipulated minimum amount of money in a bank account with a bank located in the Republic, before commencement of his business activity in the Republic, a grantee shall furnish proof of his having opened such a bank account together with a guarantee from the bank that the balance in the account shall not be allowed to fall below the stipulated minimum amount, without the prior written approval of the Board, the minimum amount stipulated under this paragraph shall be reasonable in relation to the nature and size of the business activity or foreign investment.
- (9) Each business enterprise carrying on a business under a foreign investment approval certificate, or a foreign entity conducting business activities in the Republic exclusively to fulfill the terms of a contract with the national government shall pay a minimum wage of not less than the minimum wage paid to national government employees, provided, however, that this subsection shall not apply for remuneration of workers while engaged in commercial fishing, agriculture and aquaculture enterprises; and pay into the National Treasury of the Republic of Palau, an annual fee of five hundred dollars (\$500) for each non-citizen employed, which sum shall be collected by the National Treasury.
- (10) If the Board decides not to grant investment approval certificate, it shall record the reasons therefore with as much detail as possible.
- (11) After the Board has evaluated and made a decision on an application, the decision of the Board under subsection (k), together with a copy of the application, the comments received under subsection (g), shall be transmitted to the Attorney General and the applicant by the Chairman.
- (l) The Board shall issue decision on each application for a foreign investment approval certificate within ninety (90) days after submittal of such complete application.

§ 109. Request for review.

- (a) Where an application for a foreign investment approval certificate has been denied, the applicant may request a reconsideration, giving the grounds for it and any additional information in support of his application.
- (b) The provisions of section 108 shall, as far as considered appropriate by the Board, apply to such a request for review.

(c) The decision taken on such a review to grant or deny a foreign investment approval certificate shall be final and without prejudice, but subject to any judicial remedy available to the applicant.

§ 110. Amendment of investment approval certificate.

(a) A grantee may request an amendment of the terms and conditions of foreign investment approval certificate; provided, however, that no amendment shall be granted to permit a business enterprise to engage in an activity substantially different or unrelated to that which it is permitted to engage in by way of its original foreign investment approval certificate.

(b) Such a request shall be in the form of an application together with the necessary information and sufficient reasons for requesting the amendment.

(c) Subsections (g) through (l) of section 108 of this chapter, and any other provisions thereof considered appropriate by the Board, shall apply to such an application for amendment.

§ 111. Reporting of grantee.

(a) A grantee shall submit to the Secretary of the Board such periodic reports as may be prescribed by regulations issued under this chapter to enable the Board to monitor compliance by the grantee with terms and conditions of the foreign investment approval certificate granted to it.

(b) The Board shall review the reports, and when it decides that the grantee has committed a breach of the terms and conditions, direct the grantee to rectify the breach within a stipulated period of time, or take such other action as it may consider appropriate in the circumstances.

§ 112. Modification, suspension or revocation.

(a) The Board may modify, suspend or revoke a foreign investment approval certificate if it is found that:

(1) the application of the grantee contained false or fraudulent information.

(2) the grantee presented false or fraudulent information to the Board in support of his application.

(3) the grantee resorted to bribery or the unlawful influence or coercion in connection with his application.

(4) the grantee violated any of the provisions of this chapter or any other laws of the Republic or regulations issued thereunder.

(5) the grantee violated any of the terms and conditions of the foreign investment approval certificate granted to him.

(6) the grantee carried on a business activity or made a foreign investment outside the scope of the foreign investment approval certificate granted to it.

(b) Before any action is taken under subsection (a), the Board shall satisfy itself that there are sufficient grounds to proceed against the grantee, communicate the grounds for the proposed action to the grantee, and afford him an adequate opportunity to present his case.

(c) The Board shall consider the representation of the grantee and make any further investigation it may consider necessary.

(d) If the Board decides that action under subsection (a) of this section is warranted, it shall submit it to the Attorney General.

(e) The Public Auditor, at the request of and in cooperation with the Board, shall have the authority to inspect the records of any person or entity conducting business in the Republic to assure compliance with the provisions of this chapter.

§ 113. Penalties.

Without prejudice to any action that may be taken under subsection (a) of section 112, any non-citizen:

(a) who violates any provision of subsections (a), (b) or (c) of section 103 of this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment for a period not exceeding one (1) year or a fine not to exceed twenty-five thousand dollars (\$25,000) or both;

(b) who obtains a foreign investment approval certificate by fraud, misrepresentation, bribery, unlawful influence or coercion shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment for a period not exceeding one (1) year or a fine not to exceed twenty-five thousand dollars (\$25,000) or both;

(c) who continues to engage in business after his business permit or investment approval certificate has expired or has been suspended or revoked shall, upon conviction thereof, be subject to imprisonment for a period not exceeding one (1) year or a fine not to exceed twenty-five thousand dollars (\$25,000) or both;

(d) who violates the provisions of subsection (a) of section 103 of this chapter shall be automatically disqualified from obtaining a foreign investment approval certificate in accordance with the

§ 114. Penalty for aiding and abetting.

Any person who knowingly aids or assists in any manner whatsoever, in a violation of subsections (a), (b) or (c) of section 103 of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment for a period not exceeding one (1) year or a fine not to exceed twenty-five thousand dollars (\$25,000) or both.

§ 115. Report by the Board.

(a) After the close of each calendar year, the Board shall submit an annual report to each house of the Olbiil Era Kelulau and the President of the Republic on the working of this chapter containing, among other things, a review of quantitative and qualitative aspects of applications received for foreign investment approval certificates, the progress made and difficulties encountered in dealing with them, and recommendations for improvement of the policy and procedural framework.

(b) On a quarterly basis, the Board shall submit a report to the President and each house of the Olbiil Era Kelulau on the current applications under consideration, any action taken on any application, and a summary of any periodic report received by the grantees.

§ 116. Fees.

Fees for applications, foreign investment approval certificates, and related matters shall be charged and paid to the National Treasury.

§ 117. Regulations.

The Board shall promulgate regulations in accordance with Title 6 of Palau National Code Annotated for the purpose of carrying this chapter into effect, and in particular and without prejudice to the foregoing, with respect to any of the following matters:

- (a) to amplify the expressions and provisions of this chapter;
- (b) to prescribe the forms for applications, foreign investment approval certificates, evaluation reports, reports to be submitted by the grantees and any other matters, whether or not specified to be prescribed under this chapter;
- (c) to prescribe time limits and procedures for various matters dealt with under this chapter; and
- (d) to prescribe fees for any matter dealt with under this chapter.

§ 118. Service of process.

Any non-citizen issued a foreign investment approval certificate automatically nominates and appoints the Vice President of the Republic to accept service or process on their behalf and further stipulates to the jurisdiction of the courts of the Republic involving all matters pertaining to or arising out of the authorized business activity. After the foreign investment approval certificate has been surrendered or revoked, process against the non-citizen may be served upon the Vice President in any action upon a liability or obligation occurred within the Republic prior to the surrender or revocation. Upon receipt of service of process by the Vice President, on behalf of a non-citizen license pursuant to the provisions of this chapter, the Vice President shall, within ten (10) days, mail a copy of the process to the non-citizen at the last known address on file with the Vice President. Service of process upon the Vice President for or on behalf of any non-citizen shall be cumulative to any other method of service or process provided for by law.

§ 119. Tax exemption.

Any business enterprise which constructs a facility in the Republic shall be entitled to a refund of taxes paid pursuant to 40 PNC Chapter 12 in the amount equal to the costs of any off-site road, water, power, or sewer infrastructure improvements accomplished to service such facility. Such refund shall be issued only upon approval of documentation of such costs by the Minister of Finance and the amount refunded in any single tax year shall not exceed fifty percent (50%) of the amount paid in that tax year by the business enterprise pursuant to 40 PNC Chapter 12.

§ 120. Enforcement.

Any citizen or resident of the Republic of Palau, any political subdivision of the Republic of Palau, or any incorporated or unincorporated association shall have standing and capacity to bring suit to enforce the provisions of this chapter as a private Attorney General.

§ 121. Severability.

If any provision of this chapter is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the chapter and applicability of such provision to other persons and circumstances shall not be affected thereby, and to this extent the provisions of this chapter are deemed severable.

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