

## Niue

### DEVELOPMENT INVESTMENT ACT 1992 (1992)

#### Note

The Investment Laws Navigator is based upon sources believed to be accurate and reliable and is intended to be up-to-date at the time it was generated. It is made available with the understanding that UNCTAD is not engaged in rendering legal or other professional services. To confirm that the information has not been affected or changed by recent developments, traditional legal research techniques should be used, including checking primary sources where appropriate. While every effort is made to ensure the accuracy and completeness of its content, UNCTAD assumes no responsibility for eventual errors or omissions in the data.

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.

<https://investmentpolicy.unctad.org>

## Contents

- PART 1**
- GENERAL**
- PART 2**
- REGULATION OF FOREIGN ENTERPRISES**

**PART 3**  
**CONTROL OF TAKEOVERS**  
**PART 4**  
**INVESTMENT PRIORITIES AND INCENTIVES**  
**PART 5**  
**DISCLOSURE AND FILING OF INFORMATION**  
**PART 6**  
**GUARANTEES TO FOREIGN ENTERPRISES**  
**PART 7**  
**JUDICIAL REVIEW**  
**PART 8**  
**MISCELLANEOUS**  
SCHEDULE  
Section 16

# **DEVELOPMENT INVESTMENT ACT**

## **1992**

1992/164 – 1 October 1992

1 Short title

2 Interpretation

## PART 1 GENERAL

3 Purposes of Act

4 Application of Act

5 Act binding on Crown

## PART 2 REGULATION OF FOREIGN ENTERPRISES

6 Restriction on carrying on business by foreign enterprise

7 [Spent]

8 Registration

9 Issue of certificate of registration

10 Variation of registration

11 Revocation of registration

12 Continuation of business

## PART 3 CONTROL OF TAKEOVERS

13 Transfer of shares

14 Change in status

## PART 4 INVESTMENT PRIORITIES AND INCENTIVES

15 Investment Code

16 Investment incentives and concessions

17 Application for incentives and concessions

18 Registration of foreign enterprise

19 Government departments or agencies to be informed

20 Variation, suspension and revocation of concessions

## PART 5 DISCLOSURE AND FILING OF INFORMATION

21 Disclosure and filing

## PART 6 GUARANTEES TO FOREIGN ENTERPRISES

22 Guarantees to foreign enterprises

## PART 7 JUDICIAL REVIEW

23 Application for review

24 Defects in form

25 Interim orders

26 Sufficiency of application

27 Procedure

28 Savings

## PART 8 MISCELLANEOUS

29 Advisory committees

30 Disclosure

31 Personal liability

32 Service of notices

33 Offences

34 Offences by corporations

35 Refund of concessions

36 Regulations

37-38 [Spent]

## SCHEDULES

---

To introduce a development and investment incentive scheme and to regulate foreign investment in Niue

### **1 Short title**

This is the Development Investment Act 1992.

### **2 Interpretation**

In this Act –

"activity" means an undertaking of whatever nature engaged in by an enterprise and includes each and every other undertaking that is associated with or incidental to that undertaking;

"book and document" and "book or document" includes all books, accounts, records, registers, rolls, computer tapes, discs, and printouts;

"carry on business" means to be engaged in an activity for the principal purpose of deriving a gain from that activity whether such gain is pecuniary or otherwise, but does not include –

(a) An isolated transaction, not being one of a number of similar transactions repeated from time to time;

(b) Maintaining a bank account in Niue;

(c) Taking security for or collecting any debt or enforcing any rights relating to any security;

(d) The gathering of any information or undertaking a feasibility study; "Code" means the Investment Code published under Part 4;

"employee" means any person who receives or is entitled to receive a source deduction payment under the Income Tax Act 1961;

"enterprise" means any person carrying on business or proposing to carry on business;

"existing activity" means an activity being carried on immediately before the commencement of this Act;

"foreign enterprise" means –

(a) In the case of an enterprise that is a body corporate, an enterprise –

(i) (a) in which 50 percent or more of the voting shares or power is held or controlled by persons who are not local persons; and,

(b) in which 50 percent or more of the value or number of the shares are beneficially owned or controlled by persons who are not local persons; or,

(ii) that does not have its central management or control in Niue.

(b) In the case of an enterprise other than a body corporate, an enterprise –

(i) in which 50 percent or more of the members or partners are not local persons; or

(ii) in which 50 per cent or more of the beneficial ownership of which is owned by persons who are not local persons.

(c) An enterprise that is a person other than a local person – "foreign interest" means –

(a) In the case of an enterprise that is a body corporate, the interest being –

(i) the voting shares or power held or controlled by persons who are not local persons; or

(ii) the value or number of shares beneficially owned or controlled by persons who are not local persons;

(b) In the case of an enterprise other than a body corporate the interest in which the beneficial ownership is owned or controlled by persons who are not local persons;

"local enterprise" means an enterprise other than a foreign enterprise;

"local person" means –

(a) A Niuean;

(b) A person who has the status of a permanent resident under section 6 of the Entry, Residence and Departure Act 1985; "share" includes any legal or beneficial interest in the capital or investments of a company; "shareholder" includes any member of a body corporate whether its capital

is divided into shares or not;

"trustee" includes an executor or administrator.

(2) Where in the opinion of Cabinet the activity in which an enterprise is engaged is primarily for a religious, educational, charitable or community purpose, Cabinet may exempt that enterprise from all or any of the provisions of this Act on such conditions as Cabinet thinks fit.

## **PART 1**

## **GENERAL**

### **3 Purposes of Act**

The purposes of this Act are to –

- (a) Promote, foster and assist the establishment of enterprises generally in Niue;
- (b) Encourage investment activity that will make the best use of resources consistent with national development and investment policies;
- (c) Regulate and control the direction, extent and scope of foreign investment;
- (d) Facilitate the participation of local persons in investment and in the ownership, management and control of enterprises.

### **4 Application of Act**

(1) The provisions of the –

- (a) Income Tax Act 1961;
- (b) Customs Act 1966;
- (c) Customs Tariff Act 1982;

(d) Entry Residence and Departure Act 1985; shall be subject to this Act and every decision of Cabinet made under this Act shall override any decision made by Cabinet or any Minister under any of those Acts.

(2) Nothing in this Act shall derogate from any other power of control of investment or employment under any other Act, except that no such power shall be exercised in a manner inconsistent with this Act.

(3) Registration of a foreign enterprise under this Act shall not of itself relieve the enterprise from compliance with any other Act.

### **5 Act binding on Crown**

This Act shall bind the Crown.

## **PART 2**

# **REGULATION OF FOREIGN ENTERPRISES**

### **6 Restriction on carrying on business by foreign enterprise**

No foreign enterprise shall carry on business in Niue in any activity unless that foreign enterprise is registered under this Act to carry on business in respect of that activity.

### **7 [Spent]**

### **8 Registration**

(1) No foreign enterprise shall carry on business in Niue in any activity unless it has first applied to and is registered by Cabinet under this section as a foreign enterprise to carry on business in respect of that activity.

(2) Every application made to Cabinet under subsection (1) shall contain full particulars of –

- (a) The name of the enterprise;

- (b) The address of its registered office and principal place of business;
- (c) The proposed activities in respect of which registration is sought;
- (d) The names and addresses of its shareholders, or partners, directors, executive officers, secretary, accountant and auditor or of the persons carrying out those functions;
- (e) The legal and beneficial ownership of authorised, issued and paid-up capital, and the number, class, nominal and paid-up shares held by each shareholder:

Provided that where the enterprise has not divided its capital into shares, the information shall relate to any beneficial interest in the capital and profits of the enterprise held by or on behalf of any person or a trustee of any beneficiary;

- (f) Particulars of proposed capital expenditure together with the sources and forms of financing of the enterprise;
- (g) A balance sheet setting out its assets and liabilities;
- (h) The number of local persons and expatriate persons to be employed, and the provision for the training of local persons;
- (i) The proposed activity to be undertaken and the nature and source of raw materials to be used;
- (j) Such other information as Cabinet may require.

(3) When considering an application, Cabinet shall take into account the criteria set out in the Investment Code and may either –

- (a) Approve the application with or without such terms and conditions as Cabinet may impose; or
- (b) Decline the application.

(4) Where Cabinet approves an application without imposing any terms and conditions the applicant shall be registered as a foreign enterprise to carry on business in respect of the specified activity or activities.

(5) Where Cabinet approves an application subject to terms and conditions the applicant shall notify Cabinet whether such terms and conditions are acceptable and in the event that they are, Cabinet shall register the applicant as a foreign enterprise to carry on business in respect of such activities as shall have been approved by Cabinet.

#### **9 Issue of certificate of registration**

On registration of an enterprise as a foreign enterprise to carry on business in respect of an activity or activities under this Part, Cabinet shall issue to the enterprise a certificate of registration setting out the name of the foreign enterprise and the activity or activities in respect of which it is approved to carry on business.

#### **10 Variation of registration**

Upon application being made to Cabinet by a foreign enterprise registered under this Act, Cabinet may vary all or any of the terms or conditions of the registration of the foreign enterprise.

#### **11 Revocation of registration**

(1) Where a foreign enterprise has –

(a) Contravened any of the provisions of this Act; or

(b) Failed to comply with any term or conditions of its registration as a foreign enterprise, and Cabinet, after due enquiry and having regard to the nature of the contravention or failure, considers that it is undesirable that the enterprise should continue to be registered under this Act, or registered in respect of a particular activity, Cabinet shall notify the foreign enterprise of its opinion and of the reasons for such opinion, and shall invite the foreign enterprise to make representations within a period specified by Cabinet, being in any event not less than 21 days, as to why registration of the enterprise as a foreign enterprise under this Act should not be revoked, either wholly or in respect of any particular activity.

(2) Upon receipt of any representations made under subsection (1), and after due consideration of those representations or, on expiry of the specified period if no such representations are made, Cabinet may revoke the registration of the foreign enterprise either –

(a) Wholly; or

(b) In respect of any particular activity.

(3) Where Cabinet revokes the registration of a foreign enterprise under subsection (2), either wholly or in respect of any particular activity, Cabinet shall give notice to the foreign enterprise of its decision and of the reasons for such decision.

(4) The revocation of the registration of a foreign enterprise under subsection (2) shall not in any way affect any liability of that foreign enterprise to its creditors or to any person interested in the affairs of the foreign enterprise, or the rights of such creditors or persons, whether or not the liability or right shall have arisen before or after the date that the revocation shall take effect.

## **12 Continuation of business**

No foreign enterprise shall carry on business in Niue in any activity after revocation of registration in respect of that activity has taken effect, except insofar as is necessary for the enterprise to wind up its affairs in relation to that activity, but in any event not exceeding 3 months, or such extended time as Cabinet may allow.

# **PART 3**

## **CONTROL OF TAKEOVERS**

### **13 Transfer of shares**

(1) A transfer of the legal or equitable interest in shares or any proprietary interest in an enterprise –

(a) Where that transfer has the effect of the enterprise becoming a foreign enterprise; or

(b) Where that transfer has the effect of increasing the foreign interest

in an enterprise that is a foreign enterprise, shall not be valid or of any effect unless the approval of Cabinet to such transfer or increase has first been obtained.



- (2) An increase in the share capital or any proprietary interest of an enterprise where –
- (a) The increase shall have the effect of the enterprise becoming a foreign enterprise; or
  - (b) Where the enterprise is a foreign enterprise, the increased capital is issued –
    - (i) to a subscriber who is not a local person or a local enterprise; or
    - (ii) to existing shareholders other than in the same proportion as, and upon the same terms, conditions and rights as, their existing shareholding,

shall not be valid or of any effect, unless the approval of Cabinet to such increase has first been obtained.

(3) For the purposes of subsection (1), any matter or thing (whether in Niue or elsewhere) having the effect of altering the effective ownership or control of any enterprise which has a direct or indirect interest in any enterprise carrying on business in Niue; including –

- (a) The transfer of shares or any proprietary interest;
- (b) The issue of new shares;
- (c) Any change in the governing rules, shall be deemed for the purposes of this Act to be a transfer of shares in the enterprise carrying on business in Niue.

(4) Where the approval of Cabinet is sought for the purposes of this section, the enterprise concerned or any interested party shall apply to Cabinet in writing, setting out details of the proposed increase or transfer of shares and particulars of the parties involved.

(5) Cabinet may in granting any approval under this section impose such terms and conditions it thinks fit.

(6) The approval of Cabinet to a transfer of shares or proprietary interest shall not be withheld where, before the transfer or increase or alteration, the transferor or the enterprise has taken all reasonable steps to endeavour to transfer the shares or proprietary interest or new capital, to a local person or local enterprise.

#### **14 Change in status**

Where a foreign enterprise registered under this Act becomes a local enterprise Cabinet shall, on being satisfied of the change in status, deregister the enterprise as a foreign enterprise.

## **PART 4**

# **INVESTMENT PRIORITIES AND INCENTIVES**

#### **15 Investment Code**

- (1) Cabinet shall determine and publish in the Gazette, an Investment Code.
- (2) The purpose of the Code shall be to inform potential investors as well as persons or bodies responsible for planning, promoting or encouraging investment in Niue of the priorities and reservations attached by Cabinet to investment in particular activities.

(3) The Code shall include particulars of –

- (a) Investments and activities which merit encouragement;
- (b) Activities which may be eligible for incentives and concessions to be approved under section 17(3);
- (c) General criteria by which any investment or new enterprise will be evaluated to determine its merits;
- (d) Criteria by which foreign investment or a foreign enterprise will be evaluated;
- (e) The kinds of activities reserved for local enterprises;
- (f) Such other matters as Cabinet may decide.

#### **16 Investment incentives and concessions**

- (1) Incentives and concessions as specified in the Schedule to this Act are hereby established and shall be capable of being granted by Cabinet notwithstanding any other enactment to the contrary.
- (2) Cabinet may by regulation, amend, delete from or add to the Schedule, such incentives and concessions as Cabinet may determine.
- (3) All regulations made under this section shall be laid before the Assembly forthwith after the making of it if the Assembly is then in session, and if not, shall be laid before the Assembly at the commencement of the next ensuing session.

#### **17 Application for incentives and concessions**

- (1) An enterprise carrying on business in an activity which is eligible for incentives and concessions under the Investment Code may apply to Cabinet to be granted the incentives and concessions established by this Act.
- (2) Every application to Cabinet shall include, where applicable, the following information –
  - (a) The nature of the enterprise, and the product or service to be provided;
  - (b) The market potential for the product or service;
  - (c) The legal and beneficial shareholding and the names and addresses of all legal and beneficial shareholders of the enterprise together with details of directors and management personnel;
  - (d) The source and form of financing of the enterprise;
  - (e) The locality of the enterprise and the title to the site held or expected to be obtained;
  - (f) The number of persons to be employed and in particular details of expatriate personnel and the provision for the training of local persons;
  - (g) The nature and source of raw materials intended to be used;
  - (h) Details of proposed capital expenditure;
  - (i) The dates on which the enterprise will commence its establishment and on which the enterprise will commence business in Niue;
  - (j) The type and extent of the incentives, concessions or benefits sought;

- (k) The benefits that will accrue to Niue if the application is granted;
  - (l) Such other information as Cabinet may require.
- (3) Cabinet shall consider the application having regard to the Investment Code and may –
- (a) Approve the application on such terms and conditions (if any) as Cabinet may specify; or
  - (b) Decline the application.
- (4) Where an enterprise is granted incentives or concessions pursuant to subsection (3), such incentives or concessions and any terms or conditions shall be notified in writing to the enterprise.

#### **18 Registration of foreign enterprise**

Approval of an application by a foreign enterprise under section 17 shall not waive the requirement for that enterprise to be registered pursuant to Part 2 as a foreign enterprise.

#### **19 Government departments or agencies to be informed**

Cabinet shall cause such departments or agencies of Government as shall have an interest in the matter to be notified of every decision made by it under Part 2 and under this Part, and in particular –

- (a) The incentives and concessions (including any terms and conditions relating thereto) which have been granted, where the administration of such incentives and concessions ordinarily falls within the jurisdiction of that department or agency; and
- (b) The assistance Cabinet requires of the department or agency in order to facilitate the establishment by the enterprise of any activity.

#### **20 Variation, suspension and revocation of concessions**

(1) Where Cabinet is of the opinion that a foreign enterprise has contravened or failed to comply with any term or condition of the granting to it of any incentive concession or benefit, and Cabinet, after due enquiry and having regard to the nature of the contravention or failure considers that it is undesirable that the enterprise or any activity carried on by it should continue to receive any incentive concession or benefit, Cabinet shall notify the enterprise of its opinion and of the reasons for such opinion, and shall invite the enterprise to make representations within a period specified by Cabinet, being in any event not less than 21 days, as to why the grant to the enterprise of any incentive concession or benefit should not be revoked.

(2) On receipt of any representations made under subsection (1), and after due consideration of those representations or, upon the expiry of the specified period if no such representations are made, Cabinet may revoke the grant to the enterprise of any incentive concession or benefit.

(3) Where Cabinet revokes any grant to the enterprise under subsection (2), Cabinet shall give notice in writing to the enterprise of its decision and of the reasons for such decision.

## **PART 5**

# DISCLOSURE AND FILING OF INFORMATION

## 21 Disclosure and filing

(1) Every enterprise registered as a foreign enterprise under Part 2, and every enterprise in receipt of a concession, incentive or benefit granted under Part 4 shall, during the currency of such registration concession or benefit, file with Cabinet (or such department or agency as Cabinet may direct), not later than 30 June in each year –

(a) The name of the enterprise;

(b) The address of the registered office and principal place of business of the enterprise;

(c) The activities of the enterprise;

(d) The names and addresses of its directors, chief executive officer, secretary, accountant and auditor or the persons carrying out these functions;

(e) Details of its shareholder as at the date of filing together with changes in it since the last date of filing with respect to –

(i) authorised, issued and paid-up shares; and

(ii) shareholders showing the number, class, nominal and paid-up

shares held by each shareholder or on behalf of a beneficiary: Provided that where the enterprise has not divided its capital into shares, the information shall relate to any beneficial interest in the capital and profits of the enterprise held by or on behalf of a person or beneficial owner;

(f) The activities being carried on in Niue by the enterprise.

## PART 6

# GUARANTEES TO FOREIGN ENTERPRISES

## 22 Guarantees to foreign enterprises

There is hereby extended to every foreign enterprise registered under this Act, the following guarantees –

(a) There shall be no compulsory acquisition or expropriation of the property of any enterprise in Niue except –

(i) in accordance with due process of law; and

(ii) for a public purpose defined by law; and

(iii) for payment of compensation in a manner prescribed by law;

(b) Subject to any law of Niue, every foreign enterprise shall be entitled –

(i) to remit overseas, earnings and expatriate capital;

- (ii) to remit amounts necessary to meet payment principal, interest and service charges, and similar liabilities on foreign loans and the cost of other foreign obligations;
- (iii) to remit overseas, compensation received in accordance with paragraph (a)(iii).

## **PART 7**

# **JUDICIAL REVIEW**

### **23 Application for review**

(1) The High Court may, on application (which may be called an application for review) being made to it by an enterprise within 21 days of that enterprise receiving notice of a decision to –

- (a) Revoke the registration of the enterprise as a foreign enterprise under section 11(3); or
- (b) Revoke the grant to the enterprise of any incentive, concession or

benefit under section 20(2), by order, grant in relation to such revocation, any relief that the applicant would be entitled to in any one or more of the proceedings for a writ or order of or in the nature of mandamus, prohibition, or certiorari, or for a declaration.

(2) Where on an application for review the applicant is entitled to an order declaring that a decision made is unauthorised or otherwise invalid, the Court may, instead of making such a declaration, set aside the decision.

(3) Where in any of the proceedings referred to in subsection (1), the Court had before the commencement of this Act, a discretion, on like grounds, to refuse to grant any relief on an application for review, it shall have the like discretion, on like grounds, to refuse to grant any relief on an application for review.

(4) Without limiting the generality of the foregoing provisions of this section, on an application for review the Court may direct that the whole or any part of the subject-matter of an application be reconsidered and redetermined, either generally or in respect of any specified matter. In giving any such direction the Court shall –

- (a) Advise its reasons for so doing; and
- (b) Give such directions as it thinks just as to the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

(5) Upon the reconsideration of any matter under subsection (4), regard shall be had to the Court's reasons for giving the direction and to the Court's directions.

### **24 Defects in form**

On an application for review, where the sole ground of relief established is a defect in form or a technical irregularity, if the Court finds that no substantial wrong or miscarriage of justice has occurred, it may refuse relief and, where a decision has already been made, may make an order validating the decision, notwithstanding the defect or irregularity, to have effect from such time and on such terms as the Court thinks fit.

### **25 Interim orders**

On an application for review, the Court may make such interim orders as it thinks proper, pending the final determination of the application.

## **26 Sufficiency of application**

In an application for review it is sufficient if the applicant sets out in the application the grounds on which relief is sought, and the nature of the relief sought, without specifying the proceedings referred to in section 23(1) in which the claim would have been made before the commencement of this Act.

## **27 Procedure**

Subject to this Part, the procedure in respect of any application for review shall be in accordance with the rules of the High Court.

## **29 Savings**

Nothing in this Part shall limit the Crown Proceedings Act 1950. PART 8

# **PART 8**

# **MISCELLANEOUS**

## **29 Advisory committees**

(1) Cabinet may for the purpose of this Act appoint advisory committees, and may define the functions of any such committee.

(2) The members of an advisory committee appointed under subsection (1) shall hold office during the pleasure of Cabinet.

(3) There may be paid out of money appropriated by the Assembly for the purpose to a member of any advisory committee who is not a public servant or other employee of the Crown, such remuneration and allowance as may be prescribed by Cabinet.

## **30 Disclosure**

Every member of Cabinet and every other person engaged or employed by the Crown in connection with the purposes of this Act shall maintain and aid in maintaining the secrecy of all matters which come to this knowledge when carrying out any function or duty under this Act, and shall not use to his benefit or communicate any such matter to any other person, except for the purpose of carrying out a lawful function under this Act.

## **31 Personal liability**

Every member of Cabinet and every other person engaged or employed by the Crown in connection with the purposes of this Act shall be exempt from personal liability in respect of any act or default done or made in connection with the purposes of this Act in good faith.

## **32 Service of notices**

For the purposes of this Act, any notice to be given by Cabinet shall be deemed to have been served if delivered to the last known place of business of the enterprise, or to the last known place of business or residence of any person who is an officer or shareholder of the enterprise.

## **33 Offences**

(1) A foreign enterprise which carries on business in contravention of section 8, commits an offence and shall be liable on conviction to a fine not exceeding 100 penalty units and, where the offence is a continuing one, to a further fine not exceeding 5 penalty units for every day or part of a day during which the offence continues.

(2) Every enterprise which for the purpose of obtaining or retaining any incentive concession or advantage under this Act, or for the purpose of obtaining registration of the enterprise or any activity under this Act, makes a false or misleading statement in any material particular or supplies any false or misleading information in any material particular commits an offence and shall be liable on conviction to a fine not exceeding 50 penalty units.

(3) Every enterprise which without lawful excuse refuses or fails to comply with any provision of section 21 commits an offence and shall be liable on conviction to a fine not exceeding 20 penalty units.

(4) Every person who without lawful excuse acts in contravention of section 30, commits an offence and shall be liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term of 12 months or to both.

#### **34 Offences by corporations**

Where a body corporate is guilty of an offence under this Act, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other officer of the body corporate, or any person purporting to act in any such capacity, that person as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

#### **35 Refund of concessions**

Where any enterprise is convicted of any offence under section 33(2), the enterprise shall, in addition to any other penalty provided by this Act be liable to refund to the Crown the value of any incentive concession or advantage obtained by that enterprise at any time under this Act, and the amount so determined shall be recoverable as a debt due to the Crown.

#### **36 Regulations**

(1) Cabinet may make all such regulations as may be necessary or expedient to giving full effect to the purposes or provisions of this Act and for its due administration.

(2) Without limiting the generality of subsection (1), Cabinet may make regulations prescribing –

(a) Fees in respect of applications made under this Act;

(b) Application forms and certificates required for the purpose of this Act;

(c) Forms of notices required to be given under this Act.

37-38 [Spent]

---

## **SCHEDULE**

### **Section 16**

A schedule of incentives and concessions to encourage the establishment of enterprises and development investment.

### **1 Tariff protection**

Import duty may be increased by an amount on a class of commodity presently or proposed to be produced or supplied by an enterprise to protect an approved activity where –

- (i) the activity is import substituting; and
- (ii) the protection is essential for the initial survival of the approved activity; or
- (iii) there is a threat of excessive or unreasonable trade competition by a foreign exporter into Niue of such a commodity.

### **2 Import duty concessions**

(a) Capital items Partial or full exemption from import duty may be granted to an enterprise on the importation, or refund of duty granted to an enterprise on plant, equipment, machinery or construction materials used or to be used in an approved activity, provided –

- (i) where the establishment of a project extends over several years, the concession or exemption shall not extend for more than 2 years;
- (ii) in the case of an existing or established enterprise, the replacement of capital items due to normal wear and tear or other causes together with consumable stocks shall not qualify for exemption from duty;

(b) Raw materials Partial or full exemption from import duty may be granted to an enterprise in respect of any essential raw or processed materials used directly in any production or manufacturing process in an approved activity which is import substituting or export generating for any specified period of time not exceeding 5 years. Cabinet may extend such concession for up to 2 further periods not exceeding 5 years each.

### **3 Tax incentives**

(a) Tax concessions Where any new or existing enterprise establishes a new activity in Niue, or where an activity already existing in Niue is materially expanded by any new or existing enterprise, and Cabinet is satisfied that such establishment or expansion will contribute substantially to the economic development of Niue, Cabinet may grant to that enterprise such concessions in respect of taxation on the income derived from that activity as Cabinet thinks fit. A concession granted by Cabinet may take the form of a partial or full tax concession and may be granted for any period not exceeding 5 years to an enterprise engaged in an approved activity and may in special circumstances be renewed or extended up to 2 further periods of 5 years each.

(b) Recruitment of skilled local persons domiciled overseas

(1) 200 percent of the allowable expenditures and costs on the recruitment of an employee who is a local person ordinarily domiciled overseas may be granted to any enterprise as a deduction against the taxable income of the enterprise in the year it is incurred, provided the enterprise satisfies Cabinet that –

- (i) the person possesses the skill and expertise for the job or position designated; and
- (ii) the person will be employed by the enterprise; and



(iii) the person intends to reside permanently in Niue.

(2) The allowable expenditures and costs in each instance shall include –

(i) one-way fares for the person, spouse and any children under 15 years of age;

(ii) the cost of freight (to a maximum of \$5000) of personal effects;

(iii) local establishment and relocation costs of up to \$5000.

(c) Counterpart training

(1) Where an enterprise employing an employee other than a local person, or an expatriate designates a local person to be trained to replace the expatriate employee in that position or job, up to 200 percent of the direct cost of training incurred during each year may be claimed against the taxable income of the enterprise over the

first 3 years of training.

(2) The allowance training costs shall include –

(i) In the case of overseas training – tuition fees, costs of materials directly associated with the course, fares of the trainee, salary or bursary paid to the trainee during the period of training, provided however that the enterprise first satisfies Cabinet that the training cannot be adequately carried out in Niue; or

(ii) In the case of local training – tuition fees, costs of materials directly associated with the course, and where on-the-job training is provided by an expatriate, the portion of the salary of the expatriate directly related to the on-the-job training;

(d) Depreciation allowances Accelerated depreciation allowances up to 200 percent of the rate specified in the Income Tax Act 1961 may be granted on plant, machinery, equipment, and permanent buildings used or to be used in any approved activity.

## **5 Residence permits**

Subject to such conditions normally applying, residence and work permits may be granted for periods up to 3 years to key personnel or employees of an approved enterprise.

## **6 Salary subsidy**

Cabinet may approve in certain circumstances and subject to the policies of Government that a proportion of the wages of a local person be subsidised by the Government for a period of up to 3 years, such subsidy not to exceed 75 percent for the first year; 50 percent for the second year and 25 percent for the third and final year.

\* \* \*