Development Investment

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Development Investment Act 1995–96

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The Development Investment Act 1995–96 No 22 was assented to on 6 September 1996 and commenced on 9 September 1996, as amended by:

Amending Legislation	Date of Assent	Date of Commencement
Income Tax Act 1997 No 12	10 June 1997	Sch 4 cl 3: 1 July 1997
Leases Restrictions Amendment Act 2002 No 5	9 May 2002	s 10: 9 May 2002
Development Investment Amendment Act 2004 No 19	14 June 2004	14 June 2004
Development Investment Amendment Act 2007 No 24	15 August 2007	15 August 2007
Development Investment Amendment Act 2008 No 19	26 November 2008	26 November 2008
Development Investment Amendment Act 2014 No 2	2 April 2014	1 November 2013
Development Investment Amendment Act 2019 No 14	17 December 2019	18 December 2019
Cook Islands Immigration Act 2021 No 16	6 December 2021	Sch 1: 19 April 2023

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An Act to promote trade, investment and business in the Cook Islands, promote and monitor foreign investment in the Cook Islands, and to encourage the participation of Cook Islanders in trade, investment and business by the establishment of a Development Investment Board.

1 Short title and commencement

(1) This Act may be cited as the Development Investment Act 1995–96.

(2) This Act comes into force on a date to be determined by the Queen's Representative by Order in Executive Council.

2 Interpretation

(1) In this Act, unless the context otherwise requires—

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

Board means the Development Investment Board established by Part 2

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 the Cook Islands, the principal purpose of which is other than investment for pecuniary gain:

(c) taking security for or collecting any debt or enforcing any rights relating to any security:

(d) the letting and renting of residential premises where the principal object is not pecuniary gain:

(e) the gathering of any information or undertaking a feasibility study

Code means the Investment Code published pursuant to Part 7

Cook Islander means a person of the Polynesian race indigenous to the Cook Islands and includes any person descended from a Cook Islander and a person who has been granted the status of a permanent resident of the Cook Islands, and also includes a Cook Islands enterprise

Cook Islands enterprise means an enterprise other than a foreign enterprise

Director means a director of the board of directors of the Board

enterprise means any person carrying on any activity as defined herein or proposing to carry on business

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

expatriate means a person who is not a Cook Islander but is lawfully resident in the Cook Islands

foreign enterprise means—

(a) in the case of an enterprise that is a body corporate, an enterprise—

(i) in which one third or more of the voting shares or power is held or controlled by persons who are not Cook Islanders; or

(ii) in which one third or more of the value or number of the shares are beneficially owned or controlled by persons who are not Cook Islanders; or

(iii) that does not have its central management or control in the Cook Islands:

(b) in the case of an enterprise other than a body corporate, an enterprise—

(i) in which one third of more of the members or partners are not Cook Islanders; or

(ii) in which one third or more of the beneficial ownership of which is owned by persons who are not Cook Islanders

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 Cook Islanders; or

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

(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 Cook Islanders

Minister means the Minister responsible for Business Trade and Investment Board

person includes a natural person, a corporation sole, and a body of persons whether corporate or unincorporated

share includes any legal or beneficial interest in the ownership of the assets, 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 an activity in which an enterprise is engaged is primarily for a religious, educational, charitable or community purpose of a nature approved by Cabinet, the Board must refer that application to the Minister for consideration and the Minister may exempt that enterprise from all or any of the provisions of this Act on such conditions as the Minister thinks fit and the Minister must inform the Board in writing of his or her decision.

[Section 2(1) Minister: replaced, on 1 November 2013, by section 4 of the Development Investment Amendment Act 2014 (2014 No 2).]

Part 1
General

3 Application of Act

(1) The provisions of the—

(a) Income Tax Act 1972:

(b) Cook Islands Immigration Act 2021:

(c) Customs Act 1913:

(d) Customs Tariff Act 1982:
(e) Private Import Tax Act 1984:
(f) *[Repealed]*

are subject to the provisions of this Act.

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

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

[Section 3(1)(b): amended, on 19 April 2023, by Schedule 1 of the Cook Islands Immigration Act 2021 (2021 No 16).]
[Section 3(1)(f): repealed, on 9 May 2002, by section 10 of the Leases Restrictions Amendment Act 2002 (2002 No 5).]

4 Act binds the Crown

This Act binds the Crown.

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Part 2
Development Investment Board

5 Development Investment Board

(1) There is hereby established an agency of the Crown to be called the Development Investment Board.

(2) The Board comprises the directors together with the chief executive and employees of the Board.

6 Procedure for filing applications

Every application made pursuant to this Act must be made to the Board and must be accompanied by the prescribed fee.

7 Directors

(1) There must be not less than 3 nor more than 5 Directors of the Board who shall be appointed by and responsible to the Minister for the proper functioning of the Board, one of which Directors must be appointed by the Minister as chairperson.

(2) The qualifications and term of office and remuneration of the Directors may be prescribed by regulation.

(3) No Director is deemed to be employed in the public service by reason only of being a director of the Board.

8 Proceedings of Directors

Regulations may prescribe the manner of calling meetings of Directors and the procedure at such meetings including the quorum at such meetings.

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Part 3
Administration and finance

9 Chief executive and other employees

(1) The chief executive must be appointed by the Minister acting with the concurrence of Cabinet, taking into account advice from such committee or consultants as the Minister or Cabinet may deem necessary or desirable to give advice as to an appropriate appointee.

(2) The remuneration of the chief executive shall be fixed by the Board in accordance with a recommendation made by the Higher Salaries Commission pursuant to section 11 of the Higher Salaries Commission Act 1989 and following consultation with the Minister.

(3) The chief executive may with the approval of the Board, and within financial and other guidelines as to terms and conditions approved by the Board, engage such other employees as are necessary for the proper and efficient carrying out of the Board's objectives and functions.

[Section 9: replaced, on 15 August 2007, by section 3 of the Development Investment Amendment Act 2007 (2007 No 24).]

10 Powers of Board to engage consultants and advisers

Regulations may prescribe the powers of the Board to engage consultants and advisers and to form committees, (whether such persons are directors or employees of the Board or otherwise) and the manner in which the remuneration of such persons is determined.

11 Disclosure of conflicting interest

(1) A director, employee, consultant, adviser or committee member engaged pursuant to this Act who, otherwise than as a director, employee, consultant, adviser or committee member as the case may be, has directly or indirectly any pecuniary interest or is otherwise interested (apart from an interest in common with the public) in any application before the Board, must as soon as possible after the relevant facts have come to his or her notice, disclose to the Directors the nature of his or her interest.

(2) A disclosure under this section must be recorded in the minutes of the Directors and the person making the disclosure must not take part in any decision relating to the matter to which the interest relates but must be counted as present for the purposes of forming a quorum.

(3) Every person who contravenes the provisions of subsection (1) commits an offence and on conviction is liable to a fine not exceeding $2,000 or, where that person has derived personal gain in respect of any pecuniary interest not disclosed, a fine equivalent to that pecuniary gain, whichever amount is the higher.

12 Personal liability

No director, employee, consultant, adviser, or committee member appointed or engaged pursuant to this Act is personally liable for any act or default done or

omitted to be done in good faith in the exercise or performance of the functions, powers and duties of the Board or for any debt or other liability lawfully incurred by the Board.

13 Confidentiality

(1) Every director and employee of the Board and every other person engaged by or assisting the Board in connection with the purposes of this Act, including a consultant, adviser or committee member appointed pursuant to this Part) must maintain and aid in maintaining the secrecy of all matters which come to his or her knowledge when carrying out any function or duty under this Act, and must not use or communicate any such matter to any other person, except for the purpose of carrying out a lawful function under this Act.

(2) Every person who acts in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding $2,000.

14 Finance and accounts

(1) There shall be funds appropriated by Parliament for the administration of the Board.

(2) The Board has the power to seek and secure other sources of funds and assistance for the purpose of carrying out its objectives and functions, and to negotiate, borrow, enter into contracts or do such other things as are necessary to secure such funds and assistance.

(3) Procedures and requirements regarding expenditure of monies, books of account, estimates and audit shall be subjected to the Ministry of Finance and Economic Management Act 1995–96.

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Part 4
Objectives and functions of Board

15 Objectives of Board

The objects of the Board are to—

(a) promote, foster and assist the establishment of investment generally in the Cook Islands:

(b) encourage and advise the private sector in order to make the best sustainable use of resources consistent with national development and investment policies:

(c) promote, coordinate and facilitate trade to, from and within the Cook Islands:

(d) regulate, monitor and control the direction, extent and scope of foreign investment in the Cook Islands:

(e) encourage and facilitate the participation of Cook Islanders in investment and in the ownership, management and control of investment and business:

(f) provide and facilitate training in business related skills as well as provide advisory and other business services to encourage and assist Cook Islanders in business development.

16 Functions of Board

The functions of the Board are to—

(a) as to development generally—

(i) monitor and review private sector development:

(ii) advise the Minister and Cabinet on policies and means to encourage development through private sector investment:

(iii) promote and encourage the efficient and sustainable utilisation of resources by the private sector:

(iv) liaise and co-operate with Government agencies and other sectors of the community in planning and encouraging development and in facilitating the streamlining of processes in the development sector:

(v) develop and provide such services to assist, facilitate and co-ordinate investment, trade and business development.

(b) as to investment—

(i) promote, facilitate and co-ordinate private sector development and investment:

(ii) encourage, monitor and regulate foreign investment:

(iii) advise the Minister and Cabinet on policies and strategies to encourage investment in desired or priority development areas:

(iv) promote the Cook Islands as a desirable and attractive investment area:

(v) assist, facilitate and co-ordinate the speedy and efficient processing of investment proposals.

(c) as to trade—

(i) advise the Minister and Cabinet on measures to ensure the optimum benefit to the Cook Islands from trade:

(ii) promote and encourage exports from the Cook Islands and trade within the Cook Islands as well as the development of industries and businesses involved in export or trade:

(iii) promote and facilitate public and private sector co-operation for the development and expansion of export and trade:

(iv) give advice to and liaise between the appropriate Government departments and agencies and the private sector in respect of any matter concerning the taxation, fees, import duties and levies effects of duties, levies fees and tariffs which may be an impediment to or desirable for increased export and trade or for the regulation thereof.

(d) as to business—

(i) provide business training in business skills and the provision of advisory and other business services to assist Cook Islanders to develop businesses and to acquire business skills:

(ii) encourage assist and facilitate the private sector to provide and undertake the training of Cook Islanders and to further their skills and qualifications through in-house training programmes, scholarships and trade training within the Cook Islands and overseas:

(iii) promote and foster the participation by Cook Islanders in the ownership, management and other financial benefits arising out of business generally.

(2) In the carrying out of its objectives and functions, the Board must—

(a) have regard to the Investment Code and to any general or specific direction which may from time to time be—

(i) issued by Cabinet and conveyed to the Board by way of Cabinet Minute:

(ii) issued by the Minister and conveyed to the Board in writing by the Minister:

(b) satisfy itself in respect of every application that every Cook Islander who intends to be a shareholder or the owner of an equity interest in a foreign enterprise understands the nature and effect of his or her intended interest:

(c) consult with the Minister prior to the making any decision pursuant to Part 5 (Regulation of foreign enterprises) or Part 6 (Control of takeovers) where the Board or the Chairperson are of the opinion, to be recorded in the minutes of the Board, that the decision to be made is likely to involve a matter of significant national or island-wide (as the case may be) importance, cultural or economic impact:

(d) consult with the Minister at regular intervals or as the Minister may direct, regarding the general policies and direction of the Board.

[Section 16(2): replaced, on 15 August 2007, by section 4 of the Development Investment Amendment Act 2007 (2007 No 24).]

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Part 5
Regulation of foreign enterprises

17 Restriction on carrying on business by foreign enterprise

(1) No foreign enterprise may carry on business in the Cook Islands in any activity unless that foreign enterprise is registered pursuant to this Act to carry on business in respect of that activity.

(2) Every person who does any act in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding $25,000 and to a further fine of $1,000 for every day or part of a day during which the offence continues.

18 Approval to carry on business

(1) Every foreign enterprise wishing to carry on business in the Cook Islands in any activity must make application to the Board for approval to carry on business in that activity.

(2) The procedure by which the Board considers and approves or declines an application made pursuant to subsection (1) shall be prescribed by regulation.

(3) Every person who for the purpose of obtaining for themselves or any other person registration of an enterprise or any activity pursuant to 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 is liable on conviction to a fine not exceeding $5,000.

19 Issue of certificate of registration

On approval being granted to a foreign enterprise to carry on business in respect of an activity or activities under this Part, the Board must 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.

20 Register of approvals

The Board must keep and maintain a register of every approval granted pursuant to this Part and of all terms and conditions attaching to such approvals.

21 Variation of registration

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

22 Revocation of registration

(1) The Board may revoke the registration of an enterprise of a foreign enterprise either wholly or in respect of any approved activity where a foreign enterprise has—

(a) contravened any law in force in the Cook Islands (including this Act); or

(b) failed to comply with any term or condition of its registration as a foreign enterprise.

(2) The procedure by which the Board may revoke the registration of a foreign enterprise under subsection (1) shall be prescribed by regulation.

(3) The revocation of the registration of a foreign enterprise pursuant to subsection (1) does 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 arises before or after the date that the revocation takes effect.

23 Continuation of business where registration revoked

No foreign enterprise may carry on business in the Cook Islands 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 the Board may allow.

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Part 5A
Appeal Commission

[Part 5A: inserted, on 14 June 2004, by section 2 of the Development Investment Amendment Act 2004 (2004 No 19).]

23A Appeal Commission

(1) Subject to subsection (4), there must from time to time, be appointed an Appeal Commission, which must exercise the duties, functions and powers of the Commission under this Part.

(2) The Commission shall comprise 5 members appointed by Cabinet, consisting of 3 members recommended by the Minister and 2 members recommended by the Leader of the Opposition.

(3) Cabinet must, from amongst all persons appointed as members, appoint one of them as Chairperson of the Commission.

(4) The Commission must only be convened upon the Minister receiving an appeal in writing under subsection (5) and the term of appointment of the Commission expires upon such appeal being determined by the Commission.

(5) Any person or enterprise dissatisfied with a decision of the Board where that person has applied for registration as a foreign enterprise and for approval to carry on a particular activity or activities, may within 28 days of receiving written advice of the Board's decision, appeal in writing through the Minister to the Commission.

(6) Upon receiving notice of an appeal pursuant to subsection (1), the Commission may, if it considers the registration of that person or enterprise as a foreign enterprise in respect of the activity or activities applied for to be a matter of national importance, or of importance to a particular island or islands, reverse the decision of the Board, subject to such conditions as the Commission may in its discretion impose.

(7) A decision of the Commission made pursuant to this Part must be conveyed in writing to the Board and where the Commission upholds the appeal, the Board must register the person or enterprise as a foreign enterprise with approval to carry on the activity or activities approved by the Commission, subject to such conditions as the Commission may have imposed.

(8) A decision of the Commission pursuant to this Part must be available in respect of every decision of the Board to which this section applies made after the 1 June 2003 and in every case has the same effect and is subject in all respects to the provisions of this Act, as if the decision was made by the Board pursuant to Part 5.

(9) Every decision of the Commission made pursuant to this Part must be tabled in Parliament by the person appointed as Chairperson under subsection (3), within 14 days when Parliament is sitting and as soon as possible at the next Parliament session after the decision has been conveyed to the Board under subsection (7).

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Part 6
Control of takeovers

24 Transfer of shares or interest

(1) No person may transfer any of the legal or equitable interest in shares or any proprietary interest in—

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

(b) a foreign enterprise where that transfer has the effect of increasing the foreign interest in an enterprise.

(c) *[Repealed]*

unless the approval of the Board to such transfer or interest has first been obtained.

(2) No person may increase the share capital or any proprietary interest of—

(a) an enterprise where the increase has the effect of the enterprise becoming a foreign enterprise; or

(b) a foreign enterprise where that increase has the effect of increasing the foreign interest in an enterprise.

(c) *[Repealed]*

unless the approval of the Board to such increase has first been obtained:

Provided that this subsection does not apply to any case where the increase of capital or proprietary interest in the enterprise is to all existing shareholders or owners in the same proportions as and upon the same terms and conditions as their existing shareholding or proprietary interest.

(3) For the purposes of this section, any matter or thing (whether in the Cook Islands 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 the Cook Islands, including—

(a) the transfer of shares or any proprietary interest:

(b) the issue of new shares or proprietary interest:

(c) any change in the governing rules,

is deemed for the purposes of this Act to be a transfer of shares, or proprietary interest, or increase in share capital or proprietary interest (as the case may be) in the enterprise.

(3A) Any—

(a) transfer of the legal or equitable interest in shares or proprietary interest; and

(b) any increase in capital or proprietary interest,

that requires the approval of the Board pursuant to subsection (1) or (2) as the case may require and is done or purported to have been done without first obtaining such approval, is null and void and of no effect.

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

(5) When considering whether to grant or refuse approval under this section, the Board is entitled to take into account whether the shares or proprietary interest has first been offered to Cook Islands.

(6) The Board may in granting any approval pursuant to this section impose such terms and conditions it thinks fit, in furtherance of the objects of this Act.

(7) The approval of the Board to a transfer of shares or proprietary interest, or increase of capital or proprietary interest must not be unreasonably withheld where in the opinion of the Board, before the transfer or increase or alteration the transferor or the enterprise has taken reasonable steps to endeavour to transfer the shares or proprietary interest or to issue new capital as the case may be, to a Cook Islander. The onus of demonstrating to the Board that reasonable steps have been taken pursuant to this subsection lies on the intending vendor.

(8) The approval of the Board is not required in the case of the bona fide exercise of powers by a mortgagee, receiver, liquidator, debenture holder or other charge holder acquiring title to shares or a proprietary interest in an enterprise or carrying on any activity lawfully carried on by that enterprise immediately prior to the exercise of those powers for the purpose of enforcing the security or other charge.

[Section 24(1)(b): amended, on 18 December 2019, by section 4(1) of the Development Investment Amendment Act 2019 (2019 No 14).]
[Section 24(1)(c): repealed, on 18 December 2019, by section 4(2) of the Development Investment Amendment Act 2019 (2019 No 14).]
[Section 24(2)(b): amended, on 18 December 2019, by section 4(3) of the Development Investment Amendment Act 2019 (2019 No 14).]
[Section 24(2)(c): repealed, on 18 December 2019, by section 4(4) of the Development Investment Amendment Act 2019 (2019 No 14).]
[Section 24(3A): inserted, on 26 November 2008, by section 2 of the Development Investment Amendment Act 2008 (2008 No 19).]

25 Public companies

Section 24 does not apply in the case of a public company carrying on business in the Cook Islands in respect of shares traded within or beyond the Cook Islands on a recognised stock exchange and where such trading does not result in a change to the substantial ownership and control of that company.

26 Change in status of enterprise

Where a foreign enterprise registered pursuant to this Act becomes a Cook Islands enterprise, the Board must on being satisfied of the change in status, deregister the enterprise as a foreign enterprise, and cause the appropriate register to be noted accordingly.

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Part 7
Investment priorities, incentives and concessions

27 Investment code

(1) The Queen's Representative may from time to time by Order in Executive Council establish an Investment Code.

(2) The purpose of the Code is to inform potential investors as well as the Board and other persons or bodies responsible for planning, promoting or encouraging investment in the Cook Islands, of the policies, priorities and reservations attached to investment in particular areas.

(3) The Code may include particulars of—

(a) investments and activities which merit encouragement:

(b) priorities attached to particular investments and activities in general or in respect of particular geographical areas:

(c) *[Repealed]*

(d) criteria by which foreign investment or a foreign enterprise may be evaluated:

(e) the kinds of activities reserved for Cook Islands enterprises.

[Section 27(3)(c): repealed, on 18 December 2019, by section 5 of the Development Investment Amendment Act 2019 (2019 No 14).]

27A Investment incentives and concessions established

[Repealed]

[Section 27A: repealed, on 18 December 2019, by section 6 of the Development Investment Amendment Act 2019 (2019 No 14).]

28 Investment guide

The Board may from time to time publish an investment guide which may contain particulars of the Investment Code and such other information as the Board thinks desirable for the purpose of promoting, the objects of this Act.

29 Incentives and concessions

All existing incentives and concessions granted under this Act on, or before, the date on which the Development Investment Act 2019 comes into force expire at the close of 31 December 2019.

[Section 29: replaced, on 18 December 2019, by section 7 of the Development Investment Amendment Act 2019 (2019 No 14).]

30 Registration of foreign enterprise not waived

[Repealed]

[Section 30: repealed, on 18 December 2019, by section 8 of the Development Investment Amendment Act 2019 (2019 No 14).]

31 Register of incentives and concessions

[Repealed]

[Section 31: repealed, on 18 December 2019, by section 8 of the Development Investment Amendment Act 2019 (2019 No 14).]

32 Government departments or agencies to be informed

(1) The Board must notify in writing those departments or agencies of the Government that have an interest in decisions made by the Board under this Part.

(2) Every department and agency of the Government must provide the Board with such assistance as the Board may require in order to promote the policy and objectives of this Act and the Board, and to facilitate the implementation of any object, function or decision of the Board.

[Section 32(1): replaced, on 18 December 2019, by section 9 of the Development Investment Amendment Act 2019 (2019 No 14).]

33 Variation suspension and revocation of concessions

[Repealed]

[Section 33: repealed, on 18 December 2019, by section 10 of the Development Investment Amendment Act 2019 (2019 No 14).]

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Part 8
Annual filing of information

34 Annual filing of information

(1) Every enterprise registered as a foreign enterprise under this Act must file with the Board those particulars described by Order in Council on or by the prescribed date in each year.

(2) Every person who fails to comply with subsection (1) commits an offence and on conviction is liable to a fine of not less than $200 nor more than $2,000.

[Section 34(1): replaced, on 18 December 2019, by section 11 of the Development Investment Amendment Act 2019 (2019 No 14).]

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Part 9
Guarantees to foreign enterprises

35 Guarantees to foreign enterprises

There is extended to every foreign enterprise registered pursuant to this Act, the following guarantees:

(a) there shall be no compulsory acquisition or expropriation of the property of any foreign enterprise in the Cook Islands 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 the Cook Islands, every foreign enterprise shall be entitled—
  (i) to remit overseas, earnings and foreign capital:
  (ii) to remit amounts necessary to meet payment of 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).

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Part 9A
Investigative powers

[Part 9A: inserted, on 15 August 2007, by section 5 of the Development Investment Amendment Act 2007 (2007 No 24).]

35A Board may refer matters for investigation

The Board may from time to time appoint any person or persons having appropriate legal, accounting or other relevant qualifications and experience, to investigate and report to the Board on such matters as are referred to them by the Board, for the purpose of the proper exercise of the Board's powers or its duties or functions under this Act.

35B Enforcement

(1) The Board or any person appointed by the Board pursuant to section 35A may for the purpose of assisting any investigation by the Board, or ensuring compliance with this Act or any regulations made hereunder—

(a) require any person to provide in writing such information or explanation as the Board may reasonably require for the purpose of enabling the Board to perform its functions under this Act, including any information relevant to a matter being investigated pursuant to section 35A, or for the purpose of ensuring compliance with this Act or relevant to the commission of an offence under this Act:

(b) direct any person that has failed to comply in whole or in part with any obligation under this Act or to any condition imposed in relation to any approval given under this Act, to take or cease any action to ensure compliance with the obligation or condition.

(2) Whether or not a request has been made pursuant to subsection (1)(a) or a direction made pursuant to subsection (1)(b), a Judge of the High Court may issue a warrant in such form as the Judge may direct if the Judge is satisfied on the oath of any person that there is reasonable ground for believing that there is in any building, premises, place, vehicle, vessel, box, receptacle, computer, any thing or record (including any electronic record) document or thing which may be evidence of the commission of any offence under this Act.

(3) Every warrant issued pursuant to subsection (2) must be directed to a person appointed by the Board pursuant to section 35A and must also be addressed generally to every constable, and any such warrant may only be executed in the presence of a constable.

(4) Every warrant may authorise the person to whom it is addressed and any constable to act in any one or more of the following ways, namely to—

(a) copy, and remove that copy from any premises, any computer system or data processing system in the premises and thereafter to examine any data contained in or available to the system:

(b) reproduce any record or cause it to be reproduced from electronic data in the form of a printout or other intelligible output and remove the printout or other output for examination or copying:

(c) use or cause to be used, subject to payment of reasonable compensation for such use, any photocopying or electronic copying equipment in the premises to make copies of any document or record.

(5) Any person who wilfully obstructs or hinders, or fails to co-operate with the lawful exercise of the powers under subsection (1), or who wilfully obstructs or hinders, or fails to co-operate with any person in the lawful exercise of the powers pursuant to a warrant issued under subsection (2) commits an offence punishable on conviction by—

(a) in the case of an individual, to a fine of up to $1,000; or

(b) in the case of a body corporate, to a fine of up to $5,000.

(6) Where a person claims a lien on a document, its production under this section is without prejudice to that lien.

(7) In this Part—

(a) **document** includes information recorded in any form including on computer disk or other electronic form, and in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible and intelligible form; and

(b) **constable** means a member of the Police of any rank other than a probationary member.

(8) No person is required under this Part to disclose information or to produce a document which that person would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in civil or criminal proceedings in the court.

(9) For the purpose of this section, but subject to subsection (10), any information or other matter is deemed to have come to a professional legal adviser in privileged circumstances if it is communicated or given to him—

(a) by or by a representative of a client of the adviser in connection with the giving by that adviser of legal advice to the client:

(b) by or by a representative of a person seeking legal advice from the adviser; or

(c) by any person—

(i) in contemplation of or in connection with legal proceedings; and

(ii) for the purpose of those proceedings.

(10) No information or other matter is deemed to have come to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal or unlawful purpose.

(11) Where—

(a) an offence under this section which has been committed by a body corporate 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, or other similar officer of the body corporate, or any person purporting to act in any such capacity, that person, as well as the body corporate is guilty of that offence and be liable to be proceeded against and punished accordingly:

(b) the affairs of a body corporate are managed by its members, paragraph (a) applies in relation to the acts and defaults of a member as if that member were a director of the body corporate.

[Section 35B(1)(b): replaced, on 18 December 2019, by section 12 of the Development Investment Amendment Act 2019 (2019 No 14).]

35C Offence to supply false information

Any person who supplies or is concerned in supplying to the Board or any person appointed by the Board pursuant to section 35A, or to a constable, any

statement, account, document, report or other information pursuant to this Act for any purpose for which any such statement, account, document, report or information is lawfully required thereunder, knowing the same to be false in a material particular, is guilty of an offence and is liable on conviction to a fine not exceeding $5,000.

35D Disposal of copies or reproductions

(1) Where any thing is copied or reproduced pursuant to a warrant issued under this Part it must be retained in the custody of the person authorised by the Board pursuant to section 35A except during such time or times as it is in the custody of the court.

(2) In the event that no prosecution is laid within 3 months of the copying or seizure or production of any document, record or information under this Part, or such extended time as the court on the application of the Board may reasonably allow, the information provided, seized or copied must be returned to the person from whom it was taken.

[The next page is 352,501]

Part 10
Miscellaneous

36 Service of notices

For the purposes of this Act, any notice to be given by Cabinet or the Board is deemed to have been served if delivered or sent by or on behalf of the Board by such means as are prescribed by regulations.

37 General offences and penalty

Every person who does or omits to do any act in contravention of this Act or regulations made hereunder for which no offence is provided for elsewhere commits an offence and is liable on conviction to a fine not exceeding $2,000.

38 Offences by corporations

Where a body corporate has committed an offence against this Act, every person who at the time of the commission of the offence was a director, general manager, secretary, or other similar officer of such body corporate, or was acting or purporting to act in any such capacity, is also guilty of such offence and is punishable accordingly unless that person proves that such offence was committed without their consent or knowledge and that he or she exercised all such diligence to prevent the commission of the offence as he or she ought to have exercised having regard to the nature of their functions in such capacity and in all the circumstances.

39 Refund of concessions

Where any enterprise is convicted of any offence under this Act or regulations made hereunder, the enterprise is, in addition to any other penalty provided by this Act, liable to pay to the Crown the value of any incentive concession or advantage obtained by that enterprise at any time pursuant to this Act, and the amount so determined is recoverable as a debt due to the Crown.

40 Application of Illegal Contracts Act

(1) A person who is in breach of any provision of this Act who, but for this section, would be entitled to apply for relief under the provisions of the Illegal Contracts Act 1987, does not lie entitled to relief under that Act where that person—

(a) has deliberately done or made an act or omission in contravention of this Act; or

(b) knew or ought reasonably to have known that the act or omission done or made by him or her was in contravention of this Act.

(2) In any case to which subsection (1) applies, the onus of proving that an act or omission was not deliberate, or that he or she did not or could not reasonably have known that an act or omission was in contravention of this Act, lies upon the person seeking relief, provided that ignorance of the law is not grounds for relief.

41 Regulations

(1) The Queen's Representative by Order in Executive Council, make all such regulations as may be necessary or expedient to giving full effect to the purposes or provisions of this Act and for the due administration thereof.

(2) Without limiting the generality of subsection (1), regulations may prescribe—
- (a) fees in respect of applications made under this Act:
- (b) forms required for the purposes of this Act:
- (c) particulars to be provided by a person making application for registration as a foreign enterprise or in respect of a particular activity:
- (d) *[Repealed]*
- (e) procedures by which the Board shall consider and approve or decline applications made pursuant to this Act:
- (f) *[Repealed]*
- (g) qualifications and term of office of directors:
- (h) the manner of calling meetings of directors, the procedure and quorum for meetings:
- (i) the powers of the Board to engage consultants and advisers and to form committees and the manner in which the remuneration of such persons shall be determined:
- (j) procedures and requirements regarding the expenditure of money, the keeping of stores and books of account, the provision of estimates and the audit of the boards books of account and assets:
- (k) the procedure by which the Board may suspend or revoke the registration of a foreign enterprise:
- (l) the manner in which notices to be given under this Act may be served:
- (m) offences and penalties for such offences not exceeding fines of $5,000 or imprisonment for up to 12 months or to both.

(3) Regulations made under this Act must be laid before Parliament within 28 days of the making thereof if Parliament is then in session, and if Parliament is not then in session, within 28 days of the commencement of the next ensuing session.

[Section 41(2)(d): repealed, on 18 December 2019, by section 13(1) of the Development Investment Amendment Act 2019 (2019 No 14).]
[Section 41(2)(f): repealed, on 18 December 2019, by section 13(1) of the Development Investment Amendment Act 2019 (2019 No 14).]
[Section 41(2)(k): replaced, on 18 December 2019, by section 13(2) of the Development Investment Amendment Act 2019 (2019 No 14).]

42 Consequential amendments

(1) The Monetary Board Act 1981 is amended by—
- (a) deleting from section 10, paragraph (e); and
- (b) deleting from the Second Schedule, the words "Development Investment Act 1977".

(2) In every enactment, unless the context otherwise requires, every reference to the Development Investment Act 1977 is deemed a reference to this Act.

43 Savings and transitional

(1) The Investment Code published pursuant to the Development Investment Act 1977 despite the repeal of that Act by this Act, continues in force as if prescribed under this Act.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of the Development Investments Act of 1977 by this Act does not affect any approval granted or anything whatsoever done under the enactment so repealed and every such approval so far as it subsists or is in force

at the time of the amendment or repeal continues and have effect as if it had been made or done under the corresponding provision.

44 Repeal

The Development Investment Act 1977 is repealed.

This Act is administered by the Development Investment Board.
Published under the authority of the Parliament of the Cook Islands.

[The next page is 357,001]

Development Investment Regulations 1996

TABLE OF AMENDMENTS

The Development Investment Regulations 1996 No 12 were signed on 20 September 1996 and commenced on 23 September 1996, as amended by:

Amending Legislation	Signed	Date of Commencement
Development Investment Amendment Regulations 2004 No 12	20 May 2004	20 May 2004
Business Trade and Investment Board (Fees) Regulations 2018 No 2	13 February 2018	1 January 2017
Development Investment Amendment Regulations 2019 No 4	17 December 2019	reg 7: 1 January 2020; remainder: 18 December 2019

[The next page is 357,101]

Development Investment Regulations 1996

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[The next page is 357,201]

Pursuant to section 41 of the Development Investment Act 1995–96, His Excellency the Queen's Representative acting by and with the consent of the Executive Council hereby makes the following regulations:

1 Title and commencement

(1) These regulations may be cited as the Development Investment Regulations 1996.

(2) These regulations come into force on the day of 23 September 1996.

2 Interpretation

In these regulations—

(a) **Act** means the Development Investment Act 1995–96:

(b) expressions used in these regulations have, unless the contrary intention appears, the same meanings as in the Act.

Part 1
Applications

3 Applications for registration as foreign enterprise

Every application to the Board for registration as a foreign enterprise must contain the following information—

(a) the nature of the enterprise, and the product or service to be provided, in sufficient detail to present a clear description of the proposed activity:

(b) the market potential for the product or service:

(c) any distinctive features of the activity including innovations, new processes or product, new skills and technology:

(d) the legal and beneficial shareholding and the names and addresses and passport numbers of all the legal and beneficial shareholders of the enterprise together with the same details of directors, key management and expatriate personnel:

(e) the source of financing of the enterprise:

(f) the locality of the enterprise and the title to the site held or expected to be obtained:

(g) the number of persons to be employed including numbers of expatriate personnel, and the provision for the training of Cook Islanders where expatriate personnel are initially to be employed:

(h) the nature and source of raw materials and other inputs to be used differentiating between local and imported items:

(i) details of proposed capital expenditure:

(j) the dates on which the enterprise will commence its establishment and on which it will commence business in the Cook Islands:

(k) a financial forecast of the enterprise or activity for up to 10 years which highlights, wherever it is applicable, the following information:

  (i) capital investment and borrowing from overseas and within the Cook Islands:

  (ii) anticipated export earnings:

  (iii) the value to the Cook Islands by way of import substitution:

  (iv) taxes and revenues expected to be generated for the Cook Islands:

  (v) cost of capital goods and items to be imported, including other foreign costs to be incurred in the establishment of the project:

(vi) the foreign component of operating costs attributable to the direct importation of materials and supplies:
(vii) debt servicing on any foreign loans or debts:
(viii) cost of any expatriate labour employed:
(ix) profit accruals (dividends or undistributed profits) due to any foreign person,

and must be accompanied by the fee set out in Schedule 1.

4 Application for incentives and concessions

[*Revoked*]

[Regulation 4: revoked, on 18 December 2019, by regulation 4 of the Development Investment Amendments Regulations 2019 (SN 2019/4).]

5 Consideration of applications

The Directors shall consider every application made to the Board pursuant to the Act and after giving due consideration thereto in accordance with its functions and taking into account the criteria set out in the Act and in the Investment Code and may either—

(a) approve the application with or without such terms and conditions as the board may in its discretion impose; or
(b) decline the application.

(6) The board may adjourn any application from time to time.

(7) Every approval granted pursuant to this section lapses and is of no effect if the foreign enterprise to whom the approval has been granted in respect of an activity has not commenced carrying on business in that activity within one year or such extended time as the Directors may allow.

(8) Every person who for the purpose of obtaining for himself or herself or any other person registration of an enterprise or any activity pursuant to 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 is liable on conviction to a fine not exceeding $5,000.

[The next page is 357,401]

Part 2

Variation, suspension and revocation of approvals

6 Revocation of registration

(1) Where a foreign enterprise has—

(a) contravened any law of the Cook Islands (including the Act and these regulations); or

(b) failed to comply with any term or condition of its registration as a foreign enterprise,

and the Directors, having regard to the nature of the contravention or failure as the case may be, consider that it is undesirable that the enterprise should continue to be registered under this Act, or registered in respect of a particular activity, the directors must notify the foreign enterprise of their opinion and of their reasons for such opinion, and must invite the foreign enterprise to make representations within a period specified by the directors, being in any event not less than 21 days, as to why registration of the enterprise as a foreign enterprise under the Act should not be revoked, either wholly or in respect of any particular activity.

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

(a) wholly; or

(b) in respect of any particular activity.

(3) Where the registration of a foreign enterprise is revoked pursuant to subclause (2), either wholly or in respect of any particular activity, the Directors must give notice to the Minister and to the foreign enterprise of their decision and of the reasons for such decision.

(4) The revocation of the registration of a foreign enterprise pursuant to subclause (2) does 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 arises before or after the date that the revocation takes effect.

7 Variation suspension and revocation of concessions

[*Revoked*]

[Regulation 7: revoked, on 18 December 2019, by regulation 5 of the Development Investment Amendments Regulations 2019 (SN 2019/4).]

7A Appeal fees

The fees for an appeal by a person or enterprise dissatisfied with a decision of

the Board where that person or foreign enterprise has applied for registration as a foreign enterprise and for approval to carry on a particular activity or activities is $850.

[Regulation 7A: inserted, on 1 January 2017, by regulation 5 of the Business Trade and Investment Board (Fees) Regulations 2018 (SN 2018/2).]

[The next page is 357,601]

Part 3
Annual returns

8 Annual returns

The annual return required by section 34 must—

(a) be filed with the Board not later than 30 June in every year; and

(b) set out in writing the following information—

(i) the name of the enterprise:

(ii) the address of the registered office and principal place of business of the enterprise:

(iii) the activities of the enterprise:

(iv) the names and addresses of its directors, chief executive officer, Secretary, accountant and auditor or the persons carrying out these functions:

(v) details of its shareholding together with changes therein since the last 30 June with respect to—

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

(vii) 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 must relate to any beneficial interest in the capital and profits of the enterprise held by or on behalf of a person or beneficial owner:

(viii) the activities being carried on in the Cook Islands by the enterprise:

(ix) evidence of compliance with any conditions imposed.

(x) [*Revoked*]

[Regulation 8(b)(x): revoked, on 18 December 2019, by regulation 6 of the Development Investment Amendments Regulations 2019 (SN 2019/4).]

[The next page is 357,801]

Part 4
Administration

9 Qualifications of Directors

No person may be appointed as a Director of the Board unless that person has had not less than 3 years experience in either the private sector or the public sector.

10 Term of office of Directors

(1) Every Director shall hold office for a term of 2 years but may from time to time be re-appointed.

(2) Despite subclause (1), a Director may be removed by the Minister for incompetence, disability, neglect of duty bankruptcy or misconduct proved to the satisfaction of the Minister, or may resign by written notice to the Minister.

(3) Despite subclause (1), a Director whose term of office has expired by reason of time continues to hold office until their successor is appointed.

11 Remuneration of Directors

(1) The Directors shall receive the remuneration set out in Schedule 2.

(2) Every Director is, in addition to the remuneration set out in the Schedule 2, entitled to reasonable and actual out of pocket expenses incurred in connection with his or her function as a Director.

12 Meetings of directors

(1) The chairperson must convene meetings of the directors whenever the chairperson or not less than 2 other directors or the Minister deem it necessary to do so.

(2) Notice of every meeting must be given to every director for the time being present in the Cook Islands.

(3) At all meetings of directors the quorum necessary to transact business is not less than half the directors for the time being holding office.

(4) The chairperson must preside at all meetings of the directors at which he or she is present, and if the chairperson is not present, the directors present must elect one of their number to be chairperson at that meeting.

(5) All questions arising at a meeting of the directors must be decided by a majority of the valid votes recorded thereon, and in the event of an equality of votes, the chairperson has a casting as well as a deliberative vote.

(6) Subject to this Act and any regulations made thereunder, the directors may regulate its procedure in such manner as they think fit.

(7) The chief executive of the Board must attend every meeting of the directors unless excused by the directors.

13 Minutes of meetings

(1) The directors must cause minutes to be kept of all their proceedings and decisions.

(2) The minutes must be signed by the chairperson of that meeting, at the next succeeding meeting.

(3) A copy of the minutes of every meeting must be furnished to every Director.

14 Directors may invite advisers

The Directors may, if it considers it appropriate, invite persons who are not Directors to attend a meeting of the Directors for the purpose of providing advice, or information which is likely to assist the Board in the exercise of any of its functions.

15 Committees

The Directors may from time to time establish committees, the membership of which may consist of such persons, whether Directors or employees of the Board or otherwise, as the Board considers are likely to assist the board in the exercise of its functions. The quorum of every such committee must be fixed by the Directors.

16 Consultants and advisers

The Directors may by resolution engage consultants and advisers on terms and conditions approved by the Directors when the Directors are satisfied that such consultants and advisers have knowledge and experience which will assist the Board in the attainment of its objects or in the carrying out of its functions.

17 Service of notices

For the purposes of this Act, any notice to be given by the Board is deemed to have been served if delivered or sent by or on behalf of the Board by personal delivery, mail or facsimile to—

(a) the last known place of business in the Cook Islands of the enterprise; or

(b) the last known place of business or residence in the Cook Islands of any person who is an officer member or shareholder of the enterprise; or

(c) where the business or person is represented by a barrister, solicitor accountant or agent in the Cook Islands, to such barrister, solicitor accountant or agent.

[The next page is 358,001]

Schedule 1

Application fees

[Schedule 1: replaced, on 20 May 2004, by regulation 2 of the Development Investment Amendment Regulations 2004 (SN 2004/12).]

Application for registration as a foreign enterprise	$750
Application for incentives and concessions	$100
Every other application	$100

[The next page is 358,201]

Schedule 2Remuneration of Directors

[Schedule 2: replaced, on 1 January 2017, by regulation 5 of the Business Trade and Investment Board (Fees) Regulations 2018 (SN 2018/2).]

Chairperson per meeting	$250
Other Directors per meeting	$200

[The next page is 358,401]

Schedule 3Investment incentives and concessions

[Schedule 3: revoked, on 1 January 2020, by regulation 7 of the Development Investment Amendments Regulations 2019 (SN 2019/4).]

These regulations are administered by the Development Investment Board.
Published under the authority of the Parliament of the Cook Islands.

[The next page is 363,001]

Development Investment (Investment Code) Order 2003

TABLE OF AMENDMENTS

The Development Investment (Investment Code) Order 2003 No 4 was signed on 7 May 2003 and commenced on 14 May 2003, as amended by:

Amending Legislation	Signed	Date of Commencement
Development Investment (Investment Code) (Amendment) Order 2005 No 24	15 November 2005	15 November 2005

[The next page is 363,101]

Development Investment (Investment Code) Order 2003

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2 Commencement
3 Interpretation
4 New Investment Code established
5 Investment Code made under 1977 Act revoked

Schedule
Investment Code established under Development Investment Act 1995–96

[The next page is 363,201]

Pursuant to section 27(1) of the Development Investment Act 1995–96, the Queen's Representative, acting by and with the advice and consent of the Executive Council, makes the following order:

1 Title

This order is the Development Investment (Investment Code) Order 2003.

2 Commencement

This order comes into force on the 7th day after the date that the Queen's Representative signs it.

3 Interpretation

Unless the context otherwise requires, expressions used in this order have the same meanings as in the Development Investment Act 1995–96.

4 New Investment Code established

(1) This subclause establishes the Investment Code set out in the Schedule.

(2) The Schedule is part of this order.

5 Investment Code made under 1977 Act revoked

The Investment Code published pursuant to the Development Investment Act 1977, and continued in force by section 43(1) of the Development Investment Act 1995–96, is revoked.

[The next page is 364,001]

Schedule

cl 4

Investment Code established under Development Investment Act 1995–96

[Schedule Part E paragraph 5: replaced, on 15 November 2005, by clause 2 of the Development Investment (Investment Code) (Amendment) Order 2005 (SN 2005/24).]

INTRODUCTION

1. This Investment Code is a statement of policy by Government, pursuant to the Development Investment Act 1995–96, to encourage and guide development investment in the Cook Islands.

2. Its purpose is to inform potential investors as well as the Development Investment Board and others responsible for planning, promoting, or encouraging investment in the Cook Islands, of the following:
   (a) The investments and activities which merit encouragement:
   (b) The priorities attached to particular investments and activities:
   (c) The kinds of activities reserved for Cook Islands enterprises:
   (d) The criteria by which foreign enterprises may be evaluated for approval to carry on a business in the Cook Islands.

PART A. GENERAL INVESTMENT POLICY

1. Business activities *must* contribute significantly to the economic development of the Cook Islands and result in a net economic benefit either to the Cook Islands or to at least one island in the Cook Islands.

2. Investment by Cook Islanders should be given priority. A number of business activities are, subject to specified exceptions, reserved for Cook Islanders to develop and expand. However, suitable joint venture projects between foreign investors and Cook Islanders should be encouraged.

PART B. PRIORITY AREAS FOR INVESTMENT

1. The Board should encourage investment (by Cook Islanders and others) in activities that are in the agriculture, marine resources, or tourism industry.

2. For instance, where a foreign enterprise applies for approval to carry on business in the Cook Islands in such an activity, the Board should give due consideration to the application despite the Foreign Investment Policy set out in **Part C**.

PART C. FOREIGN INVESTMENT POLICY

FOREIGN INVESTMENT POLICY

1. Foreign investment can contribute to the future development of the country but should be restricted as set out below.

2. **Foreign enterprise** is defined in section 2(1) of the Development Investment Act 1995–96. Stated generally, it refers to an enterprise or an activity which is owned one third (33.3%) or more by an overseas investor.

3. The Board should not approve or register a foreign enterprise to carry on business in the Cook Islands in any activity unless the Board is satisfied, at a minimum,—
   (a) That the activity concerned is not an activity listed in **Part D** as a reserved investment area; or
   (b) Where the activity is so listed, that—
      (i) One or more of the exceptions specified in **Part E** applies to the proposal to carry on business in the activity concerned; and
      (ii) The project proposed would generate a demonstrable net economic contribution to the Cook Islands or to at least one island in the Cook Islands (evaluated according to **Part F**).

4. Participation by Cook Islanders in foreign enterprises is a desired objective. Such participation may take various forms including shareholding, control of the enterprise, profit sharing, payment of a percentage of gross receipts, or transfer of skills and technology. Joint ventures should be encouraged.

5. In addition, the Board should apply the criteria set out in **Part G** when evaluating applications by foreign enterprises for approval to carry on business in the Cook Islands.

PART D. RESERVED INVESTMENT AREAS

Paragraph 3(a) of **Part C** refers to the following reserved investment areas:

AGRICULTURE

- □ Commercial agricultural or food production

MARINE RESOURCES

- □ Pearl farming
- □ Commercial aquaculture or harvesting of pearl shell, shell fish or other reef or lagoon products
- □ Commercial fishing (long line, purse seiner or similar)
- □ Fresh fish processing
- □ Fresh fish exporting
- □ Fish bait production

MANUFACTURING & PRODUCTION

- □ Food processing including freezing and drying, or drink bottling
- □ Screen printing of fabrics or other piece goods
- □ Garment manufacture
- □ Making of traditional or cultural handicrafts and artifacts (including commercial reproductions)
- □ Recordings of cultural performances
- □ Jewellery

TOURISM

- □ Visitor accommodation
- □ Motor vehicle rentals
- □ Diving operations
- □ Water-sports operations (water skis, parasailing, jet-skis, etc)
- □ Tourist tours or transfers
- □ Eco-tourism

OTHER AREAS

- □ Cinema operations
- □ Cultural attractions (including cultural performances)
- □ Bakeries or pastry shops
- □ Grocery retail outlets (including sundry stores, superettes, and supermarkets)
- □ Ownership of galleries for paintings or other visual arts
- □ Motor vehicle dealers
- □ Restaurants, cafes, or other food preparation and sale operations
- □ Retail of traditional or cultural handicrafts and artifacts (including commercial reproductions)
- □ Sale or supply of computer hardware or related services
- □ Trucking and cartage operations
- □ Taverns or public bars
- □ Duty free shops
- □ Laundry or dry-cleaning
- □ Places offering Internet access (eg internet cafes)
- □ Audio or video production, hire, or sale
- □ Hair dressing salons, beauty parlors, or health spas

PART E. EXCEPTIONS

Paragraph 3(b)(i) of **Part C** refers to the following exceptions:

1. The foreign enterprise wishes to acquire an existing business, despite that it may be listed in **Part D**, where the owner of the business has made a genuine and demonstrable effort to the satisfaction of the Development Investment Board to sell the business to Cook Islanders, but—

(a) has been unable to do so; or

(b) has been able to do so only at a price so far below the price obtainable by selling to the foreign enterprise, that in all the circumstances it would be unreasonable to require the owner of the business to sell to a Cook Islander.

2. The foreign enterprise wishes to establish a new business in an activity where—

(a) there is a demonstrable demand for that activity; and

(b) no Cook Islander is currently carrying on business in that activity.

3. Existing Cook Islands enterprises do not have the resources to carry out the specific project (eg specialised construction project) comprising the activity.

4. The foreign enterprise is a joint venture involving Cook Islanders (the greater the ownership and participation by Cook Islanders, the more likely it is to obtain approval).

5. Where the foreign enterprise is skills or technology oriented the project may be considered.

6. The foreign enterprise proposes to develop a niche market or niche product.

PART F. MEASURING NET ECONOMIC CONTRIBUTION

In determining net economic contribution for the purposes of paragraph 3(b)(ii) of **Part C**, the Board should take into consideration the net effect of the following factors where applicable to the project concerned:

- □ local employment or business for Cook Islanders generated:
- □ new skills and technology transfer to Cook Islanders generated:
- □ 70% real capital injection into the project is preferred however each application may be assessed on its own merits:
- □ contribution to export earnings:
- □ level of imports substituted:
- □ amount of trade to, from, or within the Cook Islands generated:
- □ taxes and revenue generated to the Cook Islands or to the island concerned:
- □ the extent to which the project involves value-added processing of raw materials or adding value to existing services.

PART G. CRITERIA FOR EVALUATION OF FOREIGN ENTERPRISES APPLYING FOR APPROVAL TO CARRY ON BUSINESS IN THE COOK ISLANDS

Paragraph 5 of **Part C** refers to the following criteria:

1. Whether there is a demand for the product or service to be provided.

2. Whether the product or service to be provided is of a kind not currently available in the Cook Islands or in the island concerned.

3. Whether there would be substantial participation by Cook Islanders in the enterprise, either from the commencement of business or within a reasonable time of such commencement.

4. Whether a significant proportion of the employees would be Cook Islanders, either from the commencement of business or within a reasonable time of such commencement.

5. If expatriate employees are needed, whether there is adequate provision for the training of Cook Islanders to replace such employees within a reasonable time of the commencement of business.

6. Whether the proposed activity involves innovations, new processes or products, or new skills and technology.

7. Whether a significant proportion of financing for the enterprise would be sourced from outside the Cook Islands.

8. Whether a significant proportion of the capital expenditure proposed in relation to the enterprise would be spent on businesses in the Cook Islands.

9. Whether the activities concerned would be carried out in an island other than Rarotonga.

10. Whether the activities concerned would generate a demonstrable net economic benefit to the Cook Islands or to at least one island in the Cook Islands (evaluated according to **Part F**).

11. Whether the activities concerned would be carried out at suitable sites.

12. Whether the activities concerned would have a significant adverse effect on the social and cultural fabric of the Cook Islands, or the island or community where the activities would be carried out.

13. Whether non-Cook Islanders who are the principals behind the enterprise, or who would be directing or managing the enterprise, are fit and proper persons to carry on business or (as the case may be) to direct or manage a business in the Cook Islands, taking into account factors such as the following:

    - previous investment and business experience:
    - previous business successes and failures:
    - current business and investment interests:
    - financial status:
    - curriculum vitae:
    - results of an Interpol check on the person.

14. Other criteria as considered appropriate by the Board, in light of its objectives and functions.

This order is administered in the Development Investment Board.
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