

# Flash report

19 August 2016

Issue 13

This flash report summarises the enactment of changes to the Foreign Investment Act following the 2016/2017 National Budget announcement. The amendment Act was passed by Parliament on 8 July 2016 and gazetted on 12 July 2016. These amendments will come into effect on a date appointed by the Minister by notice in the gazette.

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## Interpretation

- New definitions for “Board” and “Foreign Investment Policy”.

## Application for certificate

- Amendment where the CEO will not approve the application if the foreign investor or any person associated with the foreign investor has a criminal record.
- New provisions in respect of exceptions for the issue of a Foreign Investment Registration Certificate (FIRC) include where:
  - ◆ “the foreign investor or the business that the foreign investor proposes to directly or indirectly carry on is contrary to the national interest of the Republic of Fiji”; and
  - ◆ the foreign investor or the business that the foreign investor proposes to directly or indirectly carry on does not comply with the Foreign Investment Policy”
- Where a FIRC application falls within one of the exceptions provided in Section 7(4)(a) to (f) but is an acceptable foreign investment under the Foreign Investment Policy, the CEO may refer the application to the Board for recommendation to the Minister for his decision.
- Within 5 working days of the making of the application the CEO must notify the applicant in writing of its decision of grant or refusal or referral of the application to the Minister.
- The Board must make a recommendation to the Minister, for approval or denial of the application, within 15 working days of receipt of the referral and the Minister must make a decision within 15 working days of receiving the recommendation (or such later date as the Minister may deem necessary).
- The CEO must notify the applicant in writing of the Minister’s decision within 5 working days of receipt of the decision.

## Foreign Investment Policy

- New provision in respect of the preparation of the Foreign Investment Policy.
- It provides that “the Foreign Investment Policy must detail:
  - ◆ the framework for foreign investments; and
  - ◆ foreign investments that are acceptable and unacceptable”.

## Change in ownership of foreign investor

- A foreign investor (other than a foreign investor that is a listed public company) is required to seek approval from the Chief Executive for any change in ownership or shareholding particulars before the change is effected.

- The application must be made in the prescribed form and must contain the prescribed details, including notification of a Fiji address for receipt of notices.
- A foreign investor is required to notify the Chief Executive of any changes in a foreign investor's address or other details provided at the time of requesting for approval for change in ownership, within 20 working days of the date of the change.
- Exceptions for the approval of change in a foreign investor's ownership or shareholding particulars include where:
  - ◆ the CEO has reasonable ground to believe the application is incorrect, misleading or does not comply with the Act or Regulations;
  - ◆ the foreign investor or its associate has a criminal record, is an undischarged bankrupt, or is in receivership or liquidation;
  - ◆ the CEO has reasonable ground to believe the application is not genuine;
  - ◆ the foreign investor or the proposed business is contrary to national interest;
  - ◆ the foreign investor or the proposed business does not comply with the Foreign Investment Policy.
- Where an application for change in a foreign investor's ownership or shareholding particulars falls within one of the exceptions provided above, the CEO must refer the application to the Board for recommendation to the Minister for his decision.
- Within 5 working days of the making of the application the CEO must notify the applicant in writing of its decision of grant or refusal or referral of the application to the Minister.
- The Board must make a recommendation to the Minister, for approval or denial of the application, within 15 working days of receipt of the referral and the Minister must make a decision within 15 working days of receiving the recommendation (or such later date as the Minister may deem necessary).
- The CEO must notify the applicant in writing of the Minister's decision within 5 working days of receipt of the decision.
- Any person who fails to comply with the provisions relating to the change in ownership of a foreign investor (Section 11), "*shall be liable upon conviction to a fine not exceeding \$50,000*".

#### **Cancellation of certificate**

- The grounds for cancellation of the FIRC include where a foreign investor:
  - ◆ "*is engaged in any activity outside of which a certificate is granted;*
  - ◆ "*has failed to obtain prior approval from the Chief Executive for a change in its ownership or shareholding particulars*"
- Where a foreign investor engages in any activity or business outside of the approved FIRC, the Attorney General may apply to the High Court for an order forfeiting to the State any asset, interest, share or property in respect of such activity or business.

#### **Contact us**

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#### **IMPORTANT**

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