

Foreign Investment in the Solomon Islands: A Legal Analysis

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Abstract

Every nation on the perilous road towards development is bound to engage in foreign investment. The Solomon Islands is no exception. Foreign investment is often needed because it brings technology, expertise and foreign currency into the country. This paper attempts to describe foreign investment in the Solomon Islands in the last decade. It describes the foreign investment laws and analyzes how effective the laws are in facilitating foreign investment.

Introduction

Foreign investment is a potential avenue for bringing in foreign capital and technology. It also provides employment and other benefits to the local population. All countries in the world are engaged in foreign investment and Solomon Islands has been attempting to facilitate foreign investment in the last ten years. This paper attempts a legal analysis of foreign investment law in the Solomon Islands in the last decade.

It is divided into 12 chapters. Chapter one describes what foreign investment means in the Solomon Islands context. Chapter 2 gives a brief overview of the global economy which influences foreign investment. Chapter 3 describes the government policy on foreign investment from 1990 to 2000. Chapter 5 focuses on the competent authorities regulating foreign investment. Chapter 6 looks at the incentives provided under the law. This is followed by a description of the relevant procedure for obtaining registration and incentives. Chapter 8 analyzes the problems with the current law. Similarly, chapter 9 discusses other factors affecting foreign investment. Chapter 10 discusses how the law could be reformed to cure the defects and better facilitate foreign investment. Chapter 12 contains some predictions about the future of foreign investment. Finally, a conclusion is given which sums up the paper.

What is foreign investment?

According to the *Investment Act 1990* (Solomon Islands) "foreign investment" means:
any industrial, commercial, business or service undertaking carried out by a foreign investor in the Solomon Island and includes any such undertakings which

- a. does not have its central management or control in the Solomon Islands;
- b. has its voting power controlled by a person who is not a citizen of Solomon Islands;

- c. is incorporated or established by or under any law outside Solomon Islands;
- d. is an enterprise in which a joint venture is established;
- e. has the voting power held, controlled or value of shares beneficially owned by persons who are not citizens of Solomon Islands or
- f. is carried on in the name of an agent, associate, nominee or a person closely connected with a foreign investor.

The Act further defines a "foreign investor" as a person who is not a citizen of Solomon Islands..."[\[1\]](#)

Foreign Investment in the Global Economy: An Overview

Every country engages in foreign investment, as investor, host or as both. Foreign investment is closely related to trade and it contributes substantially to the investor as well as the host economies. Foreign investment is an aspect of the global economy and as such it is affected by trends in the global economy. Although this paper focuses on the period 1990 – 2000, it is important to note that major events occurring in the preceding decades influenced the trends later experienced by the global economy. One that needs to be mentioned is the Middle East oil crisis in the 1970s. The crisis led countries such as USA, UK and European countries to sort other alternatives to oil as a source of energy. This consequently affected the flow and pattern of foreign investment .

The decade 1990 – 2000 was a remarkable period in history. In those ten years, the world has witnessed a global arms conflict in the Middle East and a financial crisis in Asia with far reaching consequences. In that decade, the global economy can be described in three phases.

From 1991 to 1993, the world underwent a period of recession. Real output declined in North America, slowed down in Japan, grew very little in Europe and collapsed in the ex-USSR.(1A) On a global scale, output remained below 2 % from 1991 to 1993. Global economic growth in 1991 was at a low of 0.4% in 1991 and remained stagnant at that level until 1993.[\[2\]](#)

The period 1994 to 1997 was one of sound economic growth. In 1994, world trade grew to 9.5% and continued to increase to 9.7% in 1997. Global economic growth also remained high at an average of 3.4% from 1994 to 1997.[\[3\]](#) This was a result of recovering economies in the industrial countries and an increase in import demand.[\[4\]](#)

1998 to 2000 was again a period of recovery. In 1998, the Asian financial crisis took its toll reducing global trade and economic growth to levels similar to those at the beginning of the decade. The volume of world trade plunged to 3.7% in 1998 and 4.6% in 1999 while global economic growth fell to 1.8% and only managed to pull up to 1.9% in 1999.

Foreign investment followed a very similar trend in the last decade. A stagnant level of international capital flow characterized the period 1991 – 1993. This changed hands and capital flow increased from 1994 to 1997. In 1998, after the Asian Crisis, investors were reluctant to commit resources overseas leading to a decrease in foreign investment. The situation improved in 1999 as the global economy regained confidence and increased foreign investment.

Government Policy on Foreign Investment from 1990 – 2000

From 1990 to 2000, there were four successive governments and their implementation of foreign investment policy resulted in significantly different. The Peoples Alliance Party under Solomon Mamaloni (1989 – 1993) was supportive of foreign investment but at the same time protective of domestic investment. As a result there was a steep decline in foreign investment over the 1989 – 1993 period. In 1991 the value of foreign investment was \$1 billion.^[5] This dropped to \$51 million in 1992^[6] and \$38 million in 1993^[7] respectively.

A new government came into office in 1993, the National Coalition Partnership under Billy Hilly. The Hilly government was very ambitious and set out to increase foreign investment. Consequently, the number of proposals accepted increased from 16 in the previous year to 35 and the value of foreign investment also saw a dramatic increase from \$38 million in 1993 to \$762 million at the end of 1994.^[8] The Hilly Government however met its fate a year later when the Prime Minister resigned after running a minority government for two weeks.

In November 1994, another Mamaloni government was elected into office, now under a new party, the Solomon Islands National Unity, Reconciliation and Progressive Party.^[9] This government was convinced that one of the ways national income could increase was by employing foreign capital through foreign investment. The government opened up (indeed for the first time) and expanded the forestry, fisheries and services industry to foreign investors. Within the forestry sector, from 1993 to 1997, the government has given some \$500 million in tax incentives to encourage foreign investment.^[10] This has attracted a lot of foreign investment. Despite this income, the government has also incurred a lot of debt as a result of overseas and domestic borrowings. By the end of Mamaloni tenure, the government had incurred a debt of \$1billion to creditors.

In August 1997, the current Solomon Islands Action for Change (SIAC) government was elected under Prime Minister Bartholomew Ulufa'alu. The SIAC government is committed to radical reform of the public sector and economic regeneration through the development of the private sector.^[11] The government was committed to promoting investment as well as creating a user-friendly environment for foreign investors. As part of its strategy, the government has planned to create a one-stop-shopping center as well as amend the laws to simplify the procedure for foreign investors. This is discussed further below. The SIAC government continues to support a healthy level of foreign investment accepting 43 new proposals in 1998 including the Gold Ridge Mining Company. In 1999, 26 new proposals were accepted and by March 2000, 3 additional proposals had gone through.

The period 1989 to 1997 has been politically unstable. The change of governments caused instability in the economy. Not only were there changes in the level of investment generated, there were also changes in the level of debts incurred. Since 1990, the economy has been unstable, with fluctuating interest rates and a non-convertible currency that is always at risk of devaluation. This is discussed in more detail below. Foreign Investment policy has also fluctuated during that period deterring potential investors.

Development of Foreign Investment Law

In the Solomon Islands, prior to 1990, foreign investment was regulated by the *Foreign Investment Act (1984)*. The 1984 *Foreign Investment Act* established the Investment Board to oversee investment in the Solomon Islands.

This Act was, however, repealed in 1990 when parliament enacted the Investment Act (1990). The repeal

was an attempt by the government to provide a comprehensive law to promote domestic as well as foreign investments. The 1990 Investment Act was later amended by the *Investment (Amendment) Act 1996*. This amendment was intended to update the definitions (s. 2) provide a more stringent procedure (s 5) and protect domestic interests (s. 13). The procedure outlined in the *Investment Act 1990* and the *Amendment Act 1996* proved very complex and time consuming. This led to an attempt to clearly outline the sectors open to foreign investment (s. 4 *Investment (Amendment) Act 1996*) clearly highlighting the requirements and simplifying the approval process.

The complexities associated with foreign investment laws were obvious to the government. In 1997, the Mamaloni government requested the Foreign Investment Advisory Service (FIAS)^[12] to review the Investment Act and regulations. The review concluded that the Approval process for foreign investment was complex, time consuming, discretionary and costly (from a transactional point of view) and in consequence discouraged foreign investment. ^[13]

It recommended that that a simple registration process be implemented to replace the extensive approval mechanism in use. FIAS also prepared drafting guidelines to amend the Act and Regulations. However, in 1997, there was a change of government and no action was taken. In 1998, the present Solomon Islands Action for Change (SIAC) government picked up from where the last government left. A government task force under the Reform Program was commissioned to review the functions of the Investment Board. It made two recommendations

"[i] the existing Investment Act should either be repealed and replaced by a new Act, or extensively amended and [ii] the ministry of Commerce should formulate a list of reserved and restricted sectors [for the purposes of regulating foreign Investment] which should be approved by Cabinet and published."

Responding to the findings from the Reform Program, the Department of Commerce, Employment and Tourism has asked FIAS to prepare drafting guidelines for legislation to effectively regulate foreign investment. The FIAS also strongly recommended that a new foreign investment legislation be enacted and that the Department of Commerce, Employment and Tourism be the administering agency for the legislation and the Secretary of the Department be the Registration Officer. At the point of compiling this paper, a new Act to regulate foreign Investment is drafted encoding the two recommendations made by FIAS.

The Competent Authority

Regulation

The Investment Board regulates foreign investment in the Solomon Islands. The Investment Board was established under the 1984 *Foreign Investment Act*. The 1984 *Investment Act* was repealed by the 1990 *Investment Act* but the Board was preserved under section 3 (i) of the 1990 Act.

The Investment Board established under the *Foreign Investment Act (1984)* shall continue to function as the Investment Board.

The Board consists of the Minister of Commerce and 6 – 8 members appointed by the Minister and approved by Cabinet.^[14] The members are normally selected from different sectors of the economy. Additionally, these people must possess a high standard of competence and experience in business. The secretary is the Chief Officer of the Investment Division of the Department of Commerce, Employment and Tourism. The Investment Division acts as the secretariat of the Investment Board.

Promotion

The Investment Division of the Department of Commerce, Employment and Tourism is responsible for promotion. As highlighted above, the Investment Division is the secretariat to the Investment Board and as such the focus has been almost exclusively on administering foreign investment and awarding incentives. There is no particular mandate for promotional activities and as result promotional services have occurred on a rudimentary basis.^[15]

Based on the recommendations of the FIAS for the new Investment Act, one would expect the Investment Board's role would be minimized if not abolished. The Department of Commerce while its promotional role taken up by a new statutory body, the Investment Promotion Agency, would now perform the regulatory role.^[16]

Incentives under the Law

The incentives are provided in the *Income Tax Act*, *Sales Tax* and *Customs and Excise Act*. Pursuant to *section 15* of the *Investment Act*, a foreign investor can apply for any incentives provided under the above Acts. The incentives are:

Tax Holidays for Enterprises

- i. Enterprises with local value added products of 75% or more – 6 years.^[17]
- ii. Enterprises with local value added products of 50 – 75% - 5 years^[18]
- iii. Enterprises with local value added products of 40 – 50% - 4 years^[19]
- iv. Enterprises with local value added products of 25 – 40% - 3 years^[20]
- v. Investments with capital investment of \$10 million or more – 5 to 10 years^[21]

Tax Exemptions on Profits and Income

- i. tourist hotels of three hundred or more room, tourist resorts of fifty or more bedrooms or other tourist oriented projects – 5 years^[22]
- ii. manufactured or processed foods, fresh seafood, fresh agricultural produce – 5 years^[23]
- iii. agricultural production or export of agriculture, dairy farming, goat farming, beef production, reforestation, fisheries, offshore or deep sea fishing – 5 out of 10 years ^[24]

Reduction of Expenditure Before Taxation

- a. Expenditure for funds spent on scholarship to Solomon Islands College of Higher Education (SICHE), other higher education institutions – double deduction^[25]
- b. Buildings used for providing accommodation for employees where capital cost for accommodation is ten thousand dollars or less – 35% ^[26]
- c. Vehicles, vessels, aircraft and all plant and machinery – 25% ^[27]
- d. All buildings, fixtures, bridges, wharves, shipways, oil storage tanks not other specified - 5%^[28]
- e. Improvements to coconut plantations – one seventh of expense for seven years^[29]
- f. Improvements to oil palm plantations – one quarter of expense for four years^[30]
- g. Improvements to cocoa plantations – one fifth of expense for five years^[31]
- h. Mining – one fifth of expense for five years^[32]
- i. Improvements to yards, fences and water supplies - one tenth of expense for ten years^[33]
- j. Reforestation – one fifteenth of expense for fifteen years^[34]
- k. Overseas promotions approved by the Commissioner (especially in tourism) – 150% of expenses^[35]

Writing off of Expenditure

- a. any enterprise expanding its factory space by 5% can write off 45% of its expenditure for the first year and 5 % per annum on later years^[36]
- b. any approved enterprise engaged in the operation of tourist vessels built locally – 50 % of the cost of the vessel

Procedure for obtaining incentives

- i. First the foreign investor must fill out an application form and send it to the Investment Board ^[37]
- ii. On receipt of the application, the Board will give notice to the appropriate Ministries, relevant Provincial governments or the Honiara Town Council, as the case may be and seek their approval of the investment application ^[38]
- iii. Where the relevant Provincial governments or the Honiara Town Council has agreed on the proposal, the Board may approve the proposal.^[39]
- iv. Where the Board has approved the foreign investment, it shall register the investment and issue a certificate of approval^[40]
- v. Once the investment is registered, the investor can apply to the Board for grant of incentives contained in the Income Tax, Customs

and Excise and other relevant qualifying laws^[41]

vi. Where the Board receives this application, it shall give notice to the appropriate Ministries, Government Agencies and seek their approval in respect of the enterprise^[42]

vii. Where the appropriate Ministries and Government Agencies approved the incentive(s), the Board may approve the enterprise^[43]

viii. Where the investment does not qualify for incentives in terms of any relevant qualifying Acts, the Board shall inform the applicant accordingly^[44]

ix. On receipt of approval from the Board, the approved enterprise shall be entitled to the respective incentive^[45]

Problems with the Current Law

There are numerous actual and potential problems with the law as it presently exists. Some of these are internal and some external factors. In the following I will highlight some of the main areas of concern.

Scattered nature of provisions

Provisions dealing with foreign investment are scattered in three different pieces of legislation. These are the *Foreign Investment Act (1990)*, the *Foreign Investment (Amendment) Act (1996)* and *Investment Regulations (1999)*. From a procedural standpoint, this makes it difficult for foreigners to ascertain what laws apply and what procedures to follow.

Cost and Consumption of Time

Costly and time consuming procedure. This procedure (outlined in 6.0 above) is prescribed in section 5 of the *Investment Act (1990)*. As a prerequisite the law requires foreign investors to obtain a building plan, company registration income tax registration [and others] before applying for registration by the Investment Board.^[46] This procedure could take up to 6 months and cost at least \$50 000. After completing the above requirements, the application is then considered. If the Investment Board for any reason does not accept the application, all the time and money is wasted without any returns.

Similarly, the application procedure for incentives can be time consuming. The application has to go through the Board who then refers it to the relevant Ministries, Provincial government or Honiara Town Council for review. It is only after the Board receives an approval from the Ministry, Provincial Government or Town Council that an incentive can be granted. This procedure is time consuming and expensive for foreign investors.

Revenue Given Up Through Incentives

Government tax given up through tax incentives. Experience demonstrates that while investment is put off by high taxes, it is also not attracted by low taxes, often through tax incentives. An ideal tax system that is fair, equitable and efficient yet does not compromise government earnings is needed.

Weakness in promotional activities

This is because the law does not provide for a promotional body. In practice, the Investment Division of the Ministry of Commerce undertakes this duty. This is an overburden for the Investment Division because pursuant to section 3 [\[5\]](#) of the *Investment Act (1990)*, it is also required to act as secretariat to the Investment Board. As a result of this load, there is no effective promotion of investment in the Solomon Islands.

Other Factors Affecting Foreign Investment

Political factors

Generally, Solomon Islands is a politically stable country with a Westminster system of government. The transition from a British protectorate to an independent nation in 1978 has been peaceful. Since independence, the government and its leaders have been elected into office through a democratic process of election.

The ethnic tension that erupted in 1998 between the Guadalcanalese and the Malaitans is however a growing concern for political stability. Within the last eighteen months, twenty thousand Malaitan settlers on Guadalcanal had been repatriated to Malaita and more than 40 people were either killed or missing. [\[47\]](#) To date two agreements had been signed but breached by the warring factions. A third has been cancelled Mid April 2000 and there is no opportunity for a peaceful resolution on the horizon.

Within the last eighteen months, most of the productive sectors have suffered as a consequence of the ethnic conflict. The industry that suffered most however is the oil palm industry. With the closure of the Solomon Islands Plantations Limited, 2000 jobs had been given up and the country would likely lose 20% of its national export receipts. In the last year there has also been a marked decline in the number of new foreign investments from 24 in 1999 to 3 in 2000. [\[48\]](#)

The impacts have already been felt but the conflict could escalate into a civil war. This would have a fatal impact on foreign investment. If the government is able to resolve the conflict, the country's image and potential for investment would be restored.

Economic factors

Despite the fact that the economy seems to be improving, major economic obstacles still hinder foreign investment. Some of the important economic factors that could discourage foreign investment are:

- i. Convertibility of the local currency. The Solomon Dollar is not an internationally convertible currency.
- ii. Devaluation of local currency. The stability of the value of the Solomon Dollar in relation to the values of internationally convertible currencies is not guaranteed. In the past two years, the government has devalued the currency at least once.
- iii. Exchange rates. Although, exchange rates have remained relatively stable from 1998, it is not uncommon for exchange rates to

fluctuate. It is hard to establish investor confidence in the domestic market when the Solomon Island's currency does not have a stable exchange value. Investors will not feel confident and secure in a country that has a weak currency with an exchange rate that fluctuates constantly.^[49]

Socio-cultural factors

i. Crime. This has been briefly discussed above as a political factor. The escalation of criminal activities in the urban and industrial zones is a social problem that can deter foreign investors. There have been numerous incidences of criminal activities resulting in damage to foreign investor property. Such examples include the destruction of Islands Construction bulldozers on Choiseul in 1996 and the burning down of the Golden Springs (a Malaysian Logging company) headquarters in Honiara in 1997. Law and order has to be maintained in such areas and there has to be investor confidence that the legal system can grant redress against such acts.

ii. Unemployment. Unemployment like crime is a social as well as a political issue. Unemployment affects the general purchasing power of the public. In the Solomon Islands, 80% of the population are unemployed. The Central Bank estimated that about 7500 young people enter the labor force each year.^[50] This is however only a small percentage of the school leavers. Most of those who cannot find employment in the formal sector participate in the subsistence sector. It follows logically that prospective investors would be discouraged if they were to target largely financially disenfranchised buyers such as the Solomon Islands public.

iii. Literacy levels of local people. The literacy level in Solomon Islands is one of the worst in the Pacific. According to the UN, the adult literacy rate is only 30% well below the average for low-income countries.^[51] The problem is worst in rural areas than in urban areas. Foreign investors usually employ their workforce from the host country, thus the level of literacy of the local people is an important factor in attracting foreign investment to the Solomon Islands. "The Literacy of the local people serves two functions. First, it enables the workforce to manage the information technology in the organization and secondly, it leads to the evolution of a common corporate culture."^[52]

Geographical factors

i. Dispersal. The islands is the second largest country in the South Pacific, stretching over some 1,500 kilometers^[53] from Shorthand Islands in the North to the Santa Cruz islands in the South West. This means the capital towns are also scattered. This makes it difficult for transportation and communication from the main development

centers. The cost of transportation and communication is a factor, which might discourage foreign investors.

ii. Small size of islands. Apart from Guadalcanal, Malaita, Isabel and Choiseul and Makira, most of the islands are small. If there are natural resources on the small islands, they are either in very small quantities and inaccessible from the centers of development. Foreign investors would be discouraged if there is limited resource available to extract.

iii. Access to markets. In addition to (a) and (b) above, markets for goods are inaccessible from the islands. International markets are in Japan, Australia and the United Kingdom. Today, there are very limited markets for Solomon Islands goods within the Forum Countries. The availability of markets is always an important factor investors consider when determining whether or not to invest.

Law Reform [\[54\]](#)

In order to cure the defects in the current 'law,' two reforms need to be implemented. This section describes how the reform could be implemented. First, the Investment legislation must be reformed in order to make it transparent and simple. Second, a new promotion body has to be established to promote foreign investment. In addition to curing the current defects in the law, these reforms promote and enhance the environment for foreign investment.

Investment legislation

With regards to legislative reform, the government has two options. The first is to enact further amendments to the principal *Investment Act (1990)* and its relevant regulations. The second is to enact a new foreign investment legislation. [\[55\]](#) The first option exacerbates more than solves the problems. The second is the one that this paper proposes.

The next part highlights the most important areas that should be contained in the new legislation. It also describes how legislation might be drafted in order to rectify current problems and increase foreign investment.

i. Reserved and restricted lists

This section should clearly state that a "Reserved List" and "Restricted List" are to be established and maintained by the Secretary of the Investment Division of the Ministry of Commerce. The "Reserved List" would include the sectors only open to citizens while the "Restricted List" would be those sectors open for foreigners. Economic activities that are not included on either list are free to foreign investment. [\[56\]](#)

This provision should solve the confusion foreign investors' face when trying to determine whether their investment is allowed, entitled to certain benefits or disallowed. Thought has to be put in constructing the Lists so that local interests are protected but not to the point of hindering foreign investment.

ii. Registration of foreign investment

This section should require every foreign investment to hold a valid Foreign Investment Registration certificate issued by the Secretary of the Investment Division of the Ministry of Commerce. It should also mention that the form to fill up for the certificate should be the one set out in the Regulations to the Act.^[57]

It should be noted that holding a Foreign Investment Registration certificate would not give the foreign investment privileges over domestic investment. It merely permits the foreign investor to start the process of investment. The rationale behind this is to eliminate the unnecessary costs foreign investors often incur on building plans or incorporation if their investment is rejected. If their application is rejected, they can leave without spending unnecessarily on building plans, incorporation (in the case of a company) and other requisite procedures.

Alternatively, the law can stipulate a refundable deposit sum for certain investments. For instance, if the foreign investor wants to invest \$10 million, he can pay a 10% deposit of \$200 000. Where the proposal is accepted, the foreign investor can invest the remaining 80%. Where the proposal or application is not accepted, the foreign investor will be refunded 50% of the amount deposited.

In addition to the above, the Board must make sure there is equal distribution of investment throughout the different provinces to ensure equal distribution of development. This is to avoid the population drift to industrial areas and the rise of squatter settlements and social problems (discussed in 9.1 above)

iii. The Secretary and its functions

This section should establish the functions of the Secretary of the Investment Division of the Ministry of Commerce. This would include (a) the maintenance of the "Reserved List" and "Restricted List" of sectors (b) receipt of applications for foreign investment, (c) the award of Foreign Investment Registration certificates and (d) monitoring foreign investment.^[58]

These functions are those currently undertaken by the Investment Board. Under the new proposed legislation, this function would be taken over by the Secretary. The obvious fear would be the likelihood of bias since a single person now performs the function. However, in fact the Secretary does not have much discretion. Once the "Reserved List" and the "Restricted List" is defined, the secretary should be able to make a decision straight away and issue the certificate as appropriate.

We also need to bear in mind that a registration certificate does not mean the investor can begin to operate. It still has to undertake the relevant requirements of building plans, incorporation and others.

The advantage however is that it that it eliminates the lengthy bureaucratic process the Investment Board has to go through, sometimes for no apparent useful purpose.

iv. Monitoring Foreign Investment

This section requires the Secretary to maintain a register of all foreign investments. It must also require foreign investments to report regularly and the Secretary to monitor compliance with the

conditions laid out in their certificate conditions.^[59] With the current system, the Investment Board monitors investment compliance but this function is often hindered by the inability of the Board to meet speedily and effectively carry out compliance surveys.

With the new system, it is mandatory that the investor completes an annual survey. The information required from the investment will have to be planned out. The survey need not be onerous but should clearly specify the data required. Trained personnel should analyze this survey so that the information is reliable. The survey should provide information about the number of investors in the different sectors of the economy, the different types of activities they are engaged in and the level of investment contributed to the economy. This information will be useful to government authorities for planning as well as prospective foreign investors.

v. Cancellation of certificate and the Right to appeal

This section should outline the grounds for cancellation of a Foreign Investment Registration certificate. It should also mention the right of an applicant to appeal to the Minister if they thought the Secretary has wrongly categorized their investment or the conditions imposed is inconsistent with the Act. However, since this is a public official, the aggrieved party may apply for judicial review and the *Wednesbury* test of reasonableness should be used to determine whether the Minister's act is reasonable.^[60]

However, special care has to be exercised. Cancellation should be a last resort because of the implications to jobs, foreign investment earnings and loss to the investor. Whatever, the criteria, they must be specified and absolutely transparent.

vi. Guarantees and Penalties

Guarantees against compulsory acquisition of foreign investment property and discriminatory treatment must be confirmed (even if they are already in the Constitution or other laws). On the other hand, penalties for offences under the Act (if any other than cancellation) should also be laid out.^[61]

vii. Dispute Resolution

This part should provide for foreign investment disputes to be settled by relevant courts in the Solomon Islands and where the parties agree other settlement procedures either local or international.^[62]

Where the parties concerned agree, they may also use domestic or international conciliation and arbitration.^[63]

viii. Transition clause

Transition arrangements must be addressed in order to deal with existing foreign investments. Such investments could be required to re-register and be licensed within the next 12 months or if data exists, they could be re-registered straight away and new certificates issued to them. This must be thought out so that no existing investment is harmed.

Investment Incentives^[64]

There are two options available. The best option would be to eliminate the tax incentives and operate a tax

system, which provides fair rates and fair conditions to investors. The second solution would be to continue using incentives but the award of such incentives should be:

Awarded automatically (not discretionary), applied consistently, transparent and based on actual investment achievement (not expected achievement) and focused to address specific objectives.

At the moment, the incentives are not automatic (they are approved by the Board and the Commissioner of Income Tax at their discretion), inconsistently applied (5 year tax holiday while similar ones may have a 10 years tax holiday) and not transparent (the criteria used for awarding incentives are largely subjective).^[65]

Promotional Body^[66]

It is proposed that new legislation be enacted to establish this promotional body and the Board be established as a statutory body and not as a Department within a Ministry. This would eliminate bureaucratic constraints and procedures.

The function of the board should be to promote local and foreign investment. These can be further defined to include collection of investment data, overseas promotions and arranging appointments for overseas investors who want to see private sector people.

The legislation should also provide for the Board as the governing body. The Board should be made up of 7 members; 3 from the public sector and 4 from the private sector. Seven would ensure there would be a majority when voting. More people would represent the private sector because that would be the area investment would be focused on. It should be made a requirement that the members from the private sector must have relevant educational qualifications or wide experience in business. This would ensure that people who sit on the Investment Board are competent and productive. The 3 public officials would represent the most senior public servants in the areas the government sees as priority.^[67] There should also be provisions in the legislation dealing with removal of the Members where there is a conflict of interest because this can lead to corruption, which hinders development.

Once this body is established, promotion should be more effective since it will be focussing specifically on investment. Methods of promotion should be expanded beyond the conventional trade directories and in-flight magazines. Recent technology such as the Internet could be effectively used as well as international media commercials and promotions. International trade fairs and regional promotion campaigns are also some ways the Investment Board can promote Investment.

The Investment Board whilst responsible for encouraging investment must also be able to regulate the quality of investment coming into the country. It has the responsibility to see that investment coming in must empower the local export-oriented enterprises so that greater outbound market capacity is generated.

Other Measures to Improve Investment

Clear Government Plan for Investment

In addition to clearly outlining its policy on foreign investment, the government should clearly set out its short, medium and long-term objectives for investment. This is important because then the government can select the type of investment that will best fulfill the objectives. Such policy and objectives can be tied

with the national development objectives.

Select Target Areas

The Solomon Islands has certain areas where it has comparative advantage. The forestry and fishing industries stand out as examples. The country can maximize the benefits derived from these industries through economies of scale.

The Solomon Islands must not restrict itself to the ‘mainstream’ industries. It should encourage link industries to supplement the mainstream industries currently present. For instance, where tuna has been processed into canned fish (Solomon *taiyo*), there should also be a move to produce tin and paper locally for packaging. This also applies to other industries. In addition to developing link industries, Solomon Islanders can also specialize in areas or industries where they have comparative advantage. Such trained personnel can then be used in the training and developments in similar enterprises locally and internationally.

Export Processing Zone

Another alternative available under this model (Target Area) is export-processing zones. An export-processing zone is:

A clearly delineated industrial estate which constitutes a free trade enclave in the customs and trade regime of a country and where foreign manufacturing firms producing mainly for export benefit from a certain number of fiscal and financial incentives.^[68]

The Bina Region of Malaita that has been accepted in 1998 can be developed into such a zone. The local infrastructure however have to be built (either by government or the investor) in order to complement the fiscal and financial and legal incentives provided in such a region.

Crime Fund

The effects of crime on investment can be damaging as described above. A crime fund is a possible way to help address this problem. In the Solomon Islands, crime control is the prerogative of the police force and the financial constraints endured by the government undermine crime control. A crime fund can be created so that investors contribute a negligible part of their income towards the fund. The fund would then help in the ‘fight against crime.’ The fund must be separate from government public funds so that is used only for the purpose of fighting crime. Membership of the Board of Management for the fund must comprise a member of the police as well as an investor representative.

Forecasts in Foreign Investment

The level of foreign investment as well as the revenue generated from it fluctuates during the last decade 1990 – 2000. A lot of factors (apart from law) operate to determine the level and success of foreign investments in the Solomon Islands. Among these are the political, economic, social-cultural and geographical features of the country. Taking all these into account, two general trends can be observed. First, the level of foreign investment will slow down in the Solomon Islands in the next 5 years and

second the revenue generated from foreign investment will see a sharp decline in the same period.

Conclusion

All countries in the world take part in foreign investment. Foreign investment contributes foreign currency as well as provides required technology and employment. In the Solomon Islands, the level of foreign investment fluctuated during the period 1990 – 2000. This is also a reflection of the unstable state of government during a major part of that period.

In the Solomon Islands, foreign investment is regulated by the *Investment Act 1990* and the regulating body is the Investment Board. The Investment Act provides certain incentives as well as the procedure for obtaining the incentives.

To date however, the major problems with the law are the scattered nature of the provisions, the loss of income through tax incentives and the lack of effective promotion. In addition to the legal obstacles, the fluctuating currency, the high incidence of crime, the low levels of local literacy, the smallness and geographical dispersion of the islands also pose difficulties to foreign investment.

It is recommended that new legislation be enacted to provide a simplified but transparent procedure for foreign investment applicants as well as effective regulation. A separate legislation is also required to provide for an effective promotional body in the Solomon Islands. In addition, the government should set out clear policies on investment objectives, select target areas to achieve economy of scale and also establish a fund supported by investor profits to manage and fight crime.

At the point of writing, foreign investment is seeing some difficulties, but there is potential that Solomon Islands will greatly benefit once the foreign investment conditions are enhanced.

End Notes

[1]. CBSI. Central Bank Annual Report 1991. p. 4.

[2]. *Ibid.*

[2]. UN. 1996. *Economic and Social Survey of Asia and the Pacific*, UN. New York at page 2.

[3]. UN. 1996. *Economic and Social Survey of Asia and the Pacific*, UN. New York at 2.

[4]. *Ibid.*

[5]. CBSI Annual Report 1991 at p 21

[6]. CBSI Annual Report 1992 at p 22

[7]. CBSI Annual Report 1994 at p 22

[8]. *Ibid.*

[9]. Alasia S, 1997. *Party Politics in Solomon Islands in State, Society and Governance in Melanesia*.

ANU. Canberra, 1999

[10]. *Beneath Guadalcanal: the Economy and the Need for Reform*. Office of the Prime Minister of Solomon Islands March 2 2000. (A paper released by the office of the Prime Minister)

[11]. BJS Agencies Ltd, *Solomon Islands Trade Directory: 1999 Special 25th Year edition*. p. 23.

[12]. A joint service of the International Finance Corporation and the World Bank

[13]. FIAS, 1999: 1

[14]. Section 3(2) *Investment Amendment Act 1990*

[15]. FIAS, 1999: 7

[16]. The name suggested by FIAS is 'Solomon Islands Investment Promotion Agency'.

[17]. Part I, Sch I of *Income Tax Act (Cap 123) SI*

[18]. Part I, Sch I of *Income Tax Act (Cap 123) SI*

[19]. Part I, Sch I of *Income Tax Act (Cap 123) SI*

[20]. Part I, Sch I of *Income Tax Act (Cap 123) SI*

[21]. Part I, Sch 1, *Income Tax Act (Cap 123) SI*

[22]. Part I, Sch 2, *Income Tax Act (Cap 123) SI*

[23]. Part II, Sch 2, *Income Tax Act (Cap 23) SI*

[24]. Para. 7, Sch 2, *Income Tax Act (Cap 123) SI*

[25]. Para. 9, Sch 2, *Income Act (Cap 123) SI*

[26]. Para 1, Sch 4, *Income Tax Act (Cap 123) SI*

[27]. Para 1, Sch 4, *Income Tax Act (Cap 123) SI*

[28]. Para 1, Sch 4, *Income Tax Act (Cap 123) SI*

[29]. Para 7, Sch 4, *Income Tax Act (Cap 123) SI*

[30]. Para 7, Sch 4, *Income Tax Act (Cap 123) SI*

[31]. Para 7, Sch 4, *Income Tax Act (Cap 123) SI*

[32]. Para 9, Sch 4, *Income Tax Act (Cap 123) SI*

[33]. Para 7, Sch 4, *Income Tax Act (Cap 123) SI*

[34]. Para 7, Sch 4, *Income Tax Act (Cap 123) SI*

[b35. Para 2 (1) (b) Sch 2, *Income Tax Act (Cap 123) SI*

[36]. Para 8, Sch 2, *Income Act (Cap 123) SI*

[37]. s 5 (1) *Investment Act (1990)*

[38]. s 5 (1) *Investment Act (1990)*

[39]. s 5 (2) *Investment Act (1990)*

[40]. s 5 (2) *Investment Act (1990)*

[41]. s 7 (1) *Investment Act (1990)*

[42]. s 7 (2) *Investment Act (1990)*

[43]. s 7 (3) *Investment Act (1990)*

[44]. s 7 (4) *Investment Act (1990)*

[45]. s 7 (5) *Investment Act (1990)*

[46]. FIAS (1990) 4-5

[47]. ABC, *Chronicle of a Conflict*, 5 April 2000. at <http://www.abc.net.au/ra/solomons/conflict.html>

[48]. The figure for 2000 (i.e. 3) is only for the first quarter of 2000. There is a possibility it would increase by the end of the year.

[49]. Mwenda K, *Legal Aspects of Foreign Direct Investment in Zambia* (2000) downloaded from the internet.

[50]. (CBSI 1993, p 8)

[51]. United Nations (1989). This figure is for 1989 but there has not been any significant improvement given exponential increase in population and the inadequate education facilities.

[53]. Mwenda K. *Legal Aspects of Foreign Direct Investment in Zambia*, above

[54]. SPC, (1999) *Foreign Investment Climate in Forum Island Countries*, at 173.

[55]. These are some of the reforms also proposed by the FIAS Report (1999).

[56]. FIAS, 1999:6

[56]. See Appendix A of the FIAS Report (1999).

[57]. *Ibid.*

[58]. See Appendix A of the FIAS Report (1999)

[59]. *Ibid.*

[60]. In the FIAS report, it is suggested that the Minister's decision shall be final, see Appendix A of the FIAS Report (1999). This would be contrary to a well-established principle of judicial review applicable to decision of Public officials.

[61]. *Ibid.*

[62]. *Ibid.*

[63]. Two International dispute settlement mechanisms are available for dispute settlements: the

Convention on the Settlement of Investment Disputes (Washington Convention) and the International Centre for the Settlement of Disputes (ICSID). It is suggested one of these must be signed to have that option available to foreign investors.

[64]. The drafting guidelines prepared by FIAS for amending the investment incentives can be found in Schedule 3 of the FIAS Report (1999). I was not able to get the full drafting guidelines by the time this paper is written. Therefore the discussions on that part in this paper is only a gist of the recommendations.

[65]. Schedule 3, FIAS Report (1999).

[66]. The drafting guidelines prepared by FIAS for establishing the Investment Agency can be found in Schedule 2 of the FIAS Report (1999). Therefore, the paper merely describes the promotion agency.

[67]. See Appendix B of FIAS Report (1999)

[68]. *Economic and Social Effects of Multinational Enterprises in Export Processing Zones*, ILO (1988), p., 4, cited in Ahmadu, M. (1999)

[Labour and Employment Conditions in Export Processing ZonesA Socio-Legal Analysis on South Asia and South Pacific*](http://www.usp.ac.fj/sp_law_journal/Journal/journal_main.html) Working Paper, [1999] *Journal of Pacific Law*,. http://www.usp.ac.fj/sp_law_journal/Journal/journal_main.html

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