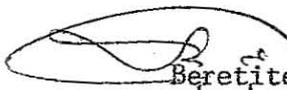


THE REPUBLIC OF KIRIBATI
(No. 9 of 1992)

I assent,


Beretitenti
31/12/1992

**AN ACT TO AMEND THE FOREIGN INVESTMENT ACT 1985; AND FOR
CONNECTED PURPOSES**

Commencement:
1992

MADE by the Maneaba ni Maungatabu and assented to by the
Beretitenti.

Short title

1. This Act may be cited as the Foreign Investment (Amendment)
Act 1992.

Interpretation

2. In this Act, unless the context otherwise requires -
the words or expressions "carrying on business", "enterprise",
"foreign enterprise", "foreign investment" and "local person" have
the meanings respectively assigned to them under the principal
Act.

Amendment of Section 2 of principal Act

3. Section 2 of the principal Act is hereby amended -

(A) by deleting the definition of "foreign enterprise" and
substituting the following definition -

"foreign enterprise" means -

(a) in the case of an enterprise that is a corporation,
an enterprise -

(i) in which any of the voting shares or power of the

corporation is held or controlled by a person who is not a local person; or

(ii) in which any share or the value of any such share is beneficially owned by a person who is not a local person; or

(iii) that is incorporated or established by or under the law of a place outside Kiribati; and

(b) in the case of any other enterprise -

(i) an enterprise in which any member or partner thereof is not a local person; or

(ii) an enterprise in which any or all of the beneficial ownership is held by a person who is not a local person; or

(iii) an enterprise that is a person other than a local person." and

(B) by deleting "more than 30%" in the definition of "foreign investment" and substituting "any".

Application generally

4. Without prejudice to section 3 of the principal Act, but subject to section 14(3) thereof, nothing in this Act shall in any way affect the operation of any business activity lawfully being carried on in Kiribati at the time this Act comes into force.

Application of section 14 of principal Act

5(1) Section 14 of the principal Act shall apply mutatis mutandis to this Act.

(2) Without prejudice to subsection (1), section 14(2) and (3) of the principal Act shall apply to an enterprise which was lawfully carrying on business in Kiribati at the date of commencement of this Act but which becomes a foreign enterprise by virtue of this Act as if for the expression "date of commencement of this Act" wherever it appears in section 14(2) and (3), there were substituted the date of commencement of this Act.

This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on 21st day of December, 1992 and it is found by me to be a true and correctly printed copy of the said Bill.


Clerk to the Maneaba ni
Maungatabu

Published by exhibition -

(a) at the Public Office of the Beretitenti
this 31st day of December 1992.


Secretary to the Cabinet

(b) at the Maneaba ni Maungatabu
this 31st day of December, 1992.


Clerk to the Maneaba ni
Maungatabu

FOREIGN INVESTMENT (AMENDMENT) ACT 1992

EXPLANATORY MEMORANDUM

The main purpose of this Act is to amend the definition of the expressions "foreign enterprise" and "foreign investment" under the Foreign Investment Act 1985 (the principal Act).

2. Under the principal Act as it now stands, an enterprise can only be classified or characterised as a foreign enterprise (which requires the approval of the Foreign Investment Commission or the Cabinet before it can carry on business in Kiribati) if, inter alia, 30% or more of the voting shares or control of the enterprise (if it is a corporation) are held or vested in persons who are not citizens of Kiribati; or in the case of a firm of partners if one-third or more of the members are persons who are not citizens of Kiribati or one-third or more of the beneficial ownership of such enterprise is held by persons who are not citizens of Kiribati.

3. In view of the increasing trend or tendency by foreign entrepreneurs and enterprises seeking to invest in Kiribati to avoid screening by the Foreign Investment Commission by the use of the simple device or expedient of reducing their stake (s) in such investments to just under 30% or one third, there is need to plug this apparent loophole.

4. What has added urgency to this amendment is the recent discovery that after application for foreign investment approvals have been considered and rejected by the Foreign Investment Commission in order to protect the interests of Kiribati and Kiribati citizens, the foreign applicants then resort to the artifice referred to in paragraph 3 above to defeat or frustrate the decisions of the Foreign Investment Commission.

5. If the Act is passed into law, any and all investments in Kiribati in which a person who is not a citizen of Kiribati has a beneficial or other interest or stake, however small, shall be subject to the approval of the Foreign Investment Commission.

6. Clause 5 of the Act affords a transitional period of 3 months to enable any existing enterprise which becomes a foreign enterprise by virtue of this amendment to comply with the requirements of the principal Act by seeking the approval of the Foreign Investment Commission.

Michae N. Takabwe
Attorney General
8 June 1992