



**Tuvalu**

# **FOREIGN DIRECT INVESTMENT ACT**





Tuvalu

## FOREIGN DIRECT INVESTMENT ACT

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Tuvalu

# FOREIGN DIRECT INVESTMENT ACT

Act 13 of 2025

## AN ACT TO REPEAL AND REPLACE THE FOREIGN DIRECT INVESTMENT ACT 1996

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### PART 1 – PRELIMINARY

#### 1 Short Title

This Act may be cited as the Foreign Direct Investment Act.

#### 2 Purpose

The purpose of this Act is to provide a legal framework in Tuvalu to encourage and facilitate foreign direct investment to support sustainable and inclusive development while protecting Tuvalu’s environment, security, national identity and cultural values.

#### 3 Interpretation

In this Act, unless the context otherwise requires –

“**Attorney General**” means the Attorney General of Tuvalu or a representative of the Office of the Attorney General as appointed by the Attorney General;

“**Board**” means the Foreign Investment Board established in accordance with section 9;

“**Director**” means the director for Business and Trade;

“**foreign direct investment**” means an investment by a foreign investor in any business enterprise or undertaking for profit where the capital investment for such undertaking is provided in whole, or in part by sources outside of Tuvalu and in respect of which the foreign investor establishes, acquires, merges with, or has a lasting interest in the business enterprise or other undertaking. It does not include aid and development projects funded by

foreign donors, negotiated, arranged or contracted by or for the Government of Tuvalu;

**“foreign direct investment proposal”** or **“proposal for foreign direct investment”** means a proposal set out in an application made by a prospective foreign investor under section 4(2);

**“foreign investor”** means either of the following making a foreign direct investment in Tuvalu:

- (a) any natural person who is not a Tuvaluan citizen; or
- (b) any legal person having its headquarters registered or incorporated outside of Tuvalu.

**“Minister”** means the Minister responsible for business and investment;

**“representative of the private sector”** as used in section 9(1)(e) means a person other than a public officer who is actively engaged in a registered private business entity in Tuvalu and may include persons employed by financial institutions;

**“reserved activity”** means a business activity set out in Schedule 1; and

**“restricted activity”** means a business activity set out in Schedule 2.

## **PART 2 - INVESTMENT APPROVALS**

### **4 Approval Required for Foreign Investors**

- (1) A foreign investor may not invest in Tuvalu without first receiving approval under this Act.
- (2) A foreign investor seeking to invest in Tuvalu may apply to the Board for approval of the proposed investment using the form in Schedule 4 and upon payment of the fee set out in Schedule 4.
- (3) The Board shall consider all completed applications for approval of a proposed investment and in doing so shall follow the procedures in either section 11 or 12 as may be relevant.
- (4) If the Board approves an application for approval of a proposed investment, the Tuvalu Foreign Investment Unit shall issue an investment certificate under section 21.

### **5 Reserved Sectors**

- (1) The business activities specified in the Reserved List set out in Schedule 1 are reserved exclusively for citizens of Tuvalu and no approval may be given under this Act for a foreign investor to own or participate in any business that includes any of the activities in the Reserved List.

- (2) If the Reserved List is amended, any holder of an existing investment certificate may carry on the activity in question as if the amendment had not been made.

## **6 Restricted sectors**

- (1) A foreign investor may carry out the business activities specified in the Restricted List set out in Schedule 2 provided that the investor satisfies the conditions set out in the Schedule for carrying out those activities.
- (2) If the Restricted List is amended, any holder of an existing investment certificate may carry on the activity in question as if the amendment had not been made.

## **7 Review of Reserved and Restricted lists**

- (1) The Tuvalu Foreign Investment Unit shall review the reserved list and the restricted list, including the conditions applicable to the restricted list, at intervals of not more than three years.
- (2) In undertaking the review, the Tuvalu Foreign Investment Unit shall consult with:
  - (a) relevant stakeholders, including stakeholders at national and local levels of government, stakeholders in the private sector and non-governmental organisations; and
  - (b) the general public.
- (3) On completion of the review, the Tuvalu Foreign Investment Unit shall:
  - (a) prepare a written report based on the findings of the review;
  - (b) provide in that report any recommendations based on the outcome of the review;
  - (c) submit the report to the Minister for consideration; and
  - (d) ensure the report is published on an Internet site to which members of the public have access.
- (4) In undertaking the review, the Tuvalu Foreign Investment Unit shall have regard to, but is not limited to, the following principles:
  - (a) the lists are as short as possible to encourage investment and competition within Tuvalu's economy;
  - (b) each activity is clearly defined to enable effective monitoring and, where relevant, enforcement of conditions;
  - (c) an activity should not be included unless there is already at least one Tuvaluan individual or business undertaking it; and
  - (d) an activity should not be included if it involves production of goods or provision of services that are necessary inputs into the operation of other Tuvaluan businesses.

- (5) In making any amendments to the reserved or restricted list:
  - (a) an activity may only be included if it is consistent with Tuvalu's international and national legal obligations; and
  - (b) an activity may not be included without making appropriate provision for existing foreign investors who have been issued with a valid investment certificate in relation to that activity to continue carrying on that activity.

## **8 Minister's Consideration of Review Report**

- (1) The Minister within twenty (20) working days after the date on which he has received a report submitted under section 7 either accept or reject each recommendation.
- (2) Where the Minister accepts a recommendation for an amendment to either or both the reserved or restricted lists, the Minister shall by Order amend the lists pursuant to the recommendation.
- (3) Where the Minister rejects a recommendation for an amendment to either or both the reserved or restricted lists, the Minister shall:
  - (a) make public a statement of the Minister's reasons for rejecting the recommendation; and
  - (b) ensure that the statement is published on the Government notice board and on an Internet site to which members of the public have access.

## **PART 3 - FOREIGN INVESTMENT BOARD**

### **9 Establishment of the Board**

- (1) There is hereby established a Foreign Investment Board comprised of seven Members as follows:
  - (a) the Secretary to Government;
  - (b) the Secretary for the Ministry responsible for business and investment;
  - (c) the Secretary for the Ministry responsible for finance;
  - (d) the Attorney General; and
  - (e) two representatives of the private sector, one each from the Tuvalu National Private Sector Organisation (TNPSO) and the Chamber of Commerce.
- (2) Where the Secretary for the Ministry responsible for business and investment is the same individual as the Secretary for the Ministry responsible for finance, then the Minister shall appoint an alternative individual to take the slot that would otherwise have been taken by the Secretary for the Ministry responsible for finance. As an alternative, the Minister shall

appoint the Secretary of another Ministry with responsibility for matters that are relevant to foreign investment, such as tourism, environment or home affairs.

(3) The Secretary for the Ministry responsible for business and investment shall be the Chair of the Board, and the Attorney-General shall be the Deputy Chair of the Board. The Deputy Chair shall, in the absence of the Chair, perform all functions of the Chair.

(4) The Chair of the Board, or in the absence of the Chair, the Deputy Chair, shall be the chair at meetings of the Board, and in the absence of both from any meeting, or any part of a meeting, one of the Board Members shall be appointed by the Board at or during the meeting to be the chair of that meeting, or part of a meeting.

(5) The Board shall meet whenever required by the Chair or Minister, or as required by section 10 of this Act.

(6) In any Board meeting, the attendance of a majority of all Board Members shall be required to constitute a quorum. Attendance may be in-person or via electronic means.

(7) Each Board Member shall have one vote. Questions arising at a Board meeting that cannot be decided on the basis of consensus among those present shall be resolved by a simple majority of the votes of the Board Members present and voting except that in the event of an equality of votes, the chair of the meeting or part of a meeting shall have a second and casting vote.

(8) The Director of the Tuvalu Foreign Investment Unit shall serve as the Secretary to the Board, and shall ensure that a complete and systematic record of all meetings of the Board is maintained.

(9) If it is not possible to convene a quorum to meet and consider an application for approval of a proposed foreign investment, the Chair shall take all reasonable steps to find an alternative means of reaching a decision. This may require absent Board members to read a briefing and convey their views electronically by email or otherwise so as to allow a decision to be reached.

(10) The Board may adopt its own rules, consistent with the provisions of this Act, to regulate the conduct of its business.

## **10 Duties and Responsibilities of the Board**

(1) The Board shall consider all completed applications for foreign direct investment and make a decision whether to approve the application under either section 11 or 12 as may be relevant.

(2) The Board shall make recommendations to the Minister from time to time for changes in the law, regulations, or government policy to encourage and facilitate foreign direct investment in Tuvalu based on reports provided to it by the Tuvalu Foreign Investment Unit. The Board may at any time request the Tuvalu Foreign Investment Unit to undertake a review and make recommendations for changes in the law, regulations or government policy.

## **11 Board's approval of low-value investment proposals**

- (1) If the value of the total capital input to a proposed foreign investment is expected to be between \$50,000 to \$250,000 ('low-value investment proposal'), and the Tuvalu Foreign Investment Unit has recommended in its report prepared under section 17 that the proposal be approved, then the Board shall approve the proposal and notify the Tuvalu Foreign Investment Unit of its decision within 10 working days after the date of receipt of the Tuvalu Foreign Investment Unit's report, unless it is satisfied that the proposal does not meet the criteria set out in Schedule 3.
- (2) If the Board does not consider that it has sufficient information to know whether the proposal meets the criteria set out in Schedule 3 it may request the applicant to provide the missing information.
- (3) The Board shall request any missing information under subsection (2) within 5 working days after the date of receipt of the Tuvalu Foreign Investment Unit's report and shall notify the Tuvalu Foreign Investment Unit of its decision within a further 10 working days. If the Board requires more time, it shall advise the Tuvalu Foreign Investment Unit who shall advise the prospective investor of the revised time period for approval. The additional time should not be more than 10 working days.
- (4) If the Board does not notify the Tuvalu Foreign Investment Unit of its decision within the timeframes in this section, then the Tuvalu Foreign Investment Unit may treat its own findings and recommendations as final and notify the prospective foreign investor accordingly.
- (5) If the Tuvalu Foreign Investment Unit has recommended that the proposal not be approved, then the Board shall endorse that recommendation except that, if it considers it to be appropriate, it may make recommendations as how the prospective investor might revise its application and invite the prospective investor to have their application re-assessed without paying a further application fee.

## **12 Board's approval of high-value investment proposals**

- (1) If the value of the total capital input to a proposed foreign investment is expected to be more than \$250,000 ('high-value investment proposal'), the Board shall consider the proposal and make a decision whether to grant approval.
- (2) In considering a high-value foreign investment proposal, the Board shall take into account the findings and recommendation in the report provided by the Tuvalu Foreign Investment Unit under section 17.
- (3) The Board shall make a decision and notify the Tuvalu Foreign Investment Unit of the decision within 10 working days after the date of receipt of the application. If the Board requires more time, it shall advise the Tuvalu Foreign Investment Unit who shall advise the prospective investor of the revised time period for approval. The additional time should not be more than 10 working days.

- (4) If the Board does not notify the Tuvalu Foreign Investment Unit of its decision within the timeframes in subsection 3, then the Tuvalu Foreign Investment Unit may treat its own findings and recommendations as final and notify the prospective foreign investor accordingly.
- (5) If the Board has decided not to approve the proposal, it may make recommendations as to how the prospective investor might revise its application and invite the prospective investor to have their application re-assessed without paying a further application fee.

### **13 Protection of national security interests**

- (1) The Board shall notify the Minister if after considering an application for foreign investment it considers that it may present risks to Tuvalu's national security, including in relation to:
  - (a) critical infrastructure, such as energy, transport, communications, data storage or financial infrastructure;
  - (b) the security of supply of critical inputs;
  - (c) access to sensitive information or the ability to control sensitive information; and
  - (d) matters relating to Tuvalu's Exclusive Economic Zone, including the seabed.
- (2) If the Board notifies the Minister under subsection (1), the Board shall at the same time provide the Minister with the report prepared by the Tuvalu Foreign Investment Unit under section 17.
- (3) The Minister shall consider the report from the Tuvalu Foreign Investment Unit, and, if the Minister considers it necessary, convene a special meeting of the Board to seek clarification or additional information regarding any matter raised in the report.
- (4) The Minister shall direct the Board to decline approval if he considers that the proposed investment is contrary to Tuvalu's national security interests. If the Minister directs the Board to give approval, he may require the Board to impose conditions to address any national security concerns arising from the proposed investment.
- (5) The Minister shall provide directions to the Board under subsection (4) within fifteen (15) working days after the date of receipt of notification from the Board under subsection (1).

### **14 Procedures and Powers of the Board**

- (1) In convening any meeting of the Board, the Chair shall have the power to require the attendance of any public officer which in the Chair's opinion is necessary and

productive to the Board's consideration of any foreign direct investment proposal at such meeting.

(2) Any public officer attending a Board meeting under subsection (1) shall participate fully at Board meetings, but shall not be entitled to a vote.

(3) The Board may make any approval of a foreign investment proposal subject to legally binding conditions which the Tuvalu Foreign Investment Unit shall prescribe on the investment certificate issued under section 21.

(4) The Board shall have the power to engage any expert as it sees fit to assist it in evaluating any foreign direct investment proposal or otherwise in discharging its duties and responsibilities under this Act.

## **15 Decisions of the Board**

(1) The Board shall make its decision with respect to any foreign direct investment proposal in the form of a written report in which it either endorses the recommendation of the Tuvalu Foreign Investment Unit or, if applicable, provides reasons for why it does not endorse that recommendation. The decision may also, if applicable, set out any conditions to be placed on the investment.

(2) The Chair and the Secretary of the Board shall sign any decision of the Board and attest to the fact that the decision was duly adopted by a majority of the Board in accordance with the Board's procedures.

## **PART 4 - TUVALU FOREIGN INVESTMENT UNIT**

### **16 Establishment of Tuvalu Foreign Investment Unit**

(1) This section establishes the Tuvalu Foreign Investment Unit.

(2) There shall be a Tuvalu Foreign Investment Unit established within the Ministry responsible for business and investment.

(3) The Secretary of the Ministry responsible for business and investment shall ensure that the Tuvalu Foreign Investment Unit has a designated director at all times

### **17 Functions of the Tuvalu Foreign Investment Unit – Approvals, compliance, monitoring and reporting**

(1) The Tuvalu Foreign Investment Unit shall:

- (a) Receive applications for approval of an investment made under section 3A and forward them to the Chair of the Board within five (5) working days after the date of receipt of a completed application;

- (b) Within 15 working days after the date of receipt of a completed application for approval of an investment, prepare and provide to the Board a report that contains:
  - (i) concise statement of the nature and type of foreign direct investment being proposed, which may include written submissions from the prospective foreign investor;
  - (ii) an assessment of whether and how the proposed investment meets the criteria set out in Schedule 3 and a recommendation as to whether the Board ought to approve the investment, along with any recommended conditions;
- (c) notify the prospective foreign investor of the Board's decision whether to approve the investment within two (2) working days after the date of receipt of the Board's decision;
- (d) within five (5) working days after the date of notifying a successful foreign investor of the Board's decision, issue an investment certificate to the investor prescribing any conditions as may be required by the Board, under Schedule 2 or other laws or regulations;
- (e) keep a record of applications and investment certificates issued to foreign investors;
- (f) prepare an annual report on investment applications received, investment certificates issued and foreign investments operating in Tuvalu;
- (g) review and monitor compliance with any conditions prescribed on the investment certificate; and
- (h) investigate any suspected breach of this Act and make recommendations to the Board and the Attorney-General.

## **18 Functions of the Tuvalu Foreign Investment Unit – Investment facilitation**

- (1) To facilitate foreign investment, the Tuvalu Foreign Investment Unit shall:
  - (a) advise and assist prospective investors in making applications for approval under this Act;
  - (b) advise and assist prospective investors in obtaining permits, licences or approvals from any Government department or agency, including by sharing information between the Government, investors and the public; and
  - (c) provide support to investors after establishment of their investment to assist them in their on-going relations with the Government and Kaupules.

**19 Functions of the Tuvalu Foreign Investment Unit – Investment promotion and policy**

(1) To promote foreign investment in Tuvalu that supports sustainable and inclusive development while protecting Tuvalu’s environment, security, national identity and cultural values, the Tuvalu Foreign Investment Unit shall:

(a) promote Tuvalu as an investment location for both foreign and domestic investors in sectors in which investment would be beneficial to the economy and the development objectives of Tuvalu;

(b) promote foreign and domestic investment by, from time to time, identifying specific projects and inviting interested investors for participation in those projects; and

(c) coordinate implementation and regular review of Tuvalu’s investment laws, regulations and policy and report to the Board.

**20 Functions of the Tuvalu Foreign Investment Unit – Miscellaneous**

(1) The Tuvalu Foreign Investment Unit shall, in addition to the duties and responsibilities in sections 18 and 19, carry out any functions that may be necessary to encourage and facilitate investment in Tuvalu.

**PART 5 – INVESTMENT CERTIFICATION**

**21 Issuance of Investment certificate**

(1) If approval has been given for a foreign investment under section 11, 12 or 13, the Tuvalu Foreign Investment Unit shall issue an investment certificate to the foreign investor. The certificate shall be in the form prescribed in Schedule 5 and state:

(a) the name of the foreign investor;

(b) the nature of the business activity in respect of which the certificate is granted;

(c) if the certificate is granted in respect of a restricted sector, any prescribed conditions relating to the carrying on of business activities in that sector; and

(d) any other conditions that the Board has prescribed.

**22 Duration of investment certificate**

(1) Subject to subsection (2), an investment certificate is valid from the date of its issue until the termination of the business activity for which it was issued.

(2) An investment certificate ceases to be valid if the business activity for which it is issued does not commence business within one (1) year of the date of issue.

(3) In subsection (2), ‘commence business’ means conducting activities appropriate to the carrying out of the particular business.

### **23 Transfer of investment certificate**

(1) The holder of an investment certificate shall not assign, cede or otherwise transfer the certificate to another person without the prior written approval of the Board.

(2) The holder of an investment certificate may apply for approval to transfer the certificate using the form in Schedule 6.

(3) The Board shall make a decision whether to approve transfer of the investment certificate and notify the Tuvalu Foreign Investment Unit of the decision within 10 working days after the date of receipt of the application.

### **24 Cancellation of investment certificate**

(1) The Board may, by notice in writing to the holder of the certificate, cancel an investment certificate if it is satisfied that the holder of the certificate:

- (a) made its application based on a material misrepresentation or false statement;
- (b) has, without prior written approval of the Board, invested in a sector other than the one stipulated in the investment certificate;
- (c) is acting or has acted in breach of a condition prescribed on the investment certificate;
- (d) has assigned, ceded or otherwise transferred the investment certificate to another person without prior written approval of the Board; or
- (e) has been convicted of an offence under Tuvalu’s law, including this Act.

(2) The Tuvalu Foreign Investment Unit shall notify the foreign investor in writing of a decision of the Board to cancel an investment certificate and shall include the reasons for the cancellation.

(3) The Board shall not cancel an investment certificate without first giving the holder of the certificate an opportunity to be heard.

(4) Cancellation of an investment certificate will take effect if the holder of the certificate has not notified their wish to be heard within fifteen (15) working days after the date of receipt of the written notice of the cancellation.

### **25 Administrative failure to issue investment certificate**

An administrative failure by the Tuvalu Foreign Investment Unit to issue an investment certificate following approval of an application by the Board under section 11, 12 or 13 will not invalidate the approval.

## **PART 6 – FOREIGN INVESTMENT REGISTER**

### **26 Establishment and Maintenance of Foreign Investment Register**

(1) The Tuvalu Foreign Investment Unit shall establish and maintain a foreign investment register.

(2) The Tuvalu Foreign Investment Unit may keep the register in the form that the Unit thinks fit, including in electronic form, but in determining the form of the register, the Unit shall have regard to facilitating public access to the register.

### **27 Contents of Foreign Investment Register**

(1) The Tuvalu Foreign Investment Unit shall ensure that the foreign investment register contains the following information in respect of each certificate issued under section 21:

- (a) the name of the current holder;
- (b) the current holder's address for service;
- (c) the current holder's contact details, including email address;
- (d) if the current holder is a transferee of the certificate, the name of the previous holder of the certificate;
- (e) the registration number and date of issue of the certificate;
- (f) if the certificate is a replacement certificate, its date of issue;
- (g) the business activity or activities to which the certificate relates; and
- (h) if the certificate has been cancelled under section 24, the date of cancellation and the reason for cancellation.

### **28 Amendment of Foreign Investment Register**

(1) The Tuvalu Foreign Investment Unit may amend the foreign investment register as required to:

- (a) update information;
- (b) correct or delete information wrongly entered in the register; or
- (c) include information wrongly omitted from the register.

(2) The Tuvalu Foreign Investment Unit must give written notice to the relevant certificate holder of any amendment under subsection (1).

## **PART 7 - REPORTING**

### **29 Holder of Investment Certificate to Report Annually**

- (1) The holder of an investment certificate shall prepare and submit an annual status report to the Tuvalu Foreign Investment Unit. The report shall contain at least:
- (a) the total value of the investor's capital investment in Tuvalu as at the date of the report;
  - (b) a summary of the investor's business activities in Tuvalu for the reporting year, including where applicable, information about any transfer of knowledge and skills to Tuvaluan citizens, and data showing any exports undertaken as part of the business; and
  - (c) the number of individuals employed by the investor and whether they are Tuvaluan citizens.
- (2) The holder of the investment certificate shall submit the status report in the month of the year that is the anniversary of the month of issue of the certificate.

### **30 Notification by Holder of Investment Certificate**

- (1) The holder of an investment certificate shall promptly notify the Tuvalu Foreign Investment Unit in writing if:
- (a) they decide not to invest in the business activity specified in the certificate; or
  - (b) having started to invest in the business activity, they decide to abandon the investment.
- (2) The holder of an investment certificate shall ensure that a notice under subsection (1) includes reasons for abandoning the investment.
- (3) The holder of an investment certificate shall promptly notify the Tuvalu Foreign Investment Unit in writing if:
- (a) there is a change in the business name under which the investor conducts the business activity;
  - (b) there is a change in the location of the business activity or the address for service of documents; or
  - (c) they cease any business activity to which the certificate relates.
- (4) On receipt of notice from the holder of the investment certificate under this section, the Foreign Investment Board shall either amend or cancel the certificate as appropriate and, if the holder of the certificate is ceasing business, issue a replacement certificate for the remaining business activities if the certificate also relates to other business activities that have not ceased.

### **31 Annual Report by Tuvalu Foreign Investment Unit**

(1) The Tuvalu Foreign Investment Unit shall, within four (4) months after the end of each financial year:

- (a) prepare an annual report as to:
  - (i) the administration of this Act during the financial year; and
  - (ii) the conduct of investment activities by foreign investors in Tuvalu during the financial year;
- (b) provide a copy of the report to the Minister; and
- (c) ensure that the report is published on an Internet site to which members of the public have access.

(2) When preparing the report, the Tuvalu Foreign Investment Unit shall:

- (a) consider and take into account annual status reports filed by investors during the financial year; and
  - (b) not specify any information in the report in a manner that identifies a foreign investor or discloses the details of the investment or business operations of a foreign investor.
- (2) The annual report may be included as a section in the annual report of the Ministry responsible for business and investment.

## **PART 8 – REVIEW AND APPEALS**

### **32 Establishment of the Investment Appeals Committee**

There is hereby established an Investment Appeals Committee to be appointed by the Cabinet.

### **33 Appeals**

An applicant whose investment proposal is declined or investment certificate is cancelled may, within 30 working days, appeal to the Investment Appeals Committee.

## **PART 9 – OFFENCES AND MISCELLANEOUS**

### **34 Offences**

(1) A person commits an offence if they:

- (a) undertake, establish or operate an investment without a valid investment certificate issued under section 21;

- (b) change the nature of the investment in a manner that makes it materially different from the approved investment; or
  - (c) are in breach of any conditions prescribed on their investment certificate.
- (2) A person commits an offence if they submit any information which they know to be false, misleading or fraudulent in a material particular.
- (3) A person commits an offence if they change the ownership or control of their investment without notifying the Board in writing.
- (4) A person who commits an offence under this Act is liable on conviction to a fine not exceeding \$200,000.

### **35 Amendment of Schedules**

The Minister, after consultation with Cabinet, may by Order amend any or all of the lists in Schedule 1, Schedule 2 and Schedule 3, and the forms and templates in Schedules 4, 5 and 6.

### **36 Regulations**

The Minister may make regulations relating to any matter in respect of which the Minister considers necessary to achieve the purpose of this Act and which are consistent with Tuvalu's international obligations relating to the treatment of foreign investors and investments.

### **37 Confidentiality**

- (1) Subject to subsection (2), no individual tasked with the duties and responsibilities afforded to the Tuvalu Foreign Investment Unit or Board under this Act may:
- (a) disclose any information that may come into their possession and which is considered to be confidential; or
  - (b) use any information for anything other than the purpose for which it has been received.
- (2) An individual tasked with the duties and responsibilities afforded to the Tuvalu Foreign Investment Unit or Board may publish or disclose the information referred to in subsection (1) if:
- (a) the information is already publicly available;
  - (b) the information is in a statistical or summary form;
  - (c) the publication or disclosure of the information is made to a law enforcement or regulatory agency for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the law enforcement or regulatory agency by any enactment;

- (d) the publication or disclosure of the information is with the consent of the person to whom the information relates is confidential.

### **38 Repeal and Transitional Provisions**

- (1) The Foreign Direct Investment Act referred to in this section as the “repealed Act”, is repealed.
- (2) This Act shall, upon commencement, be read and construed as the Foreign Direct Investment Act.
- (3) Any references in any written law, agreement, instrument or other document to the repealed Act shall, unless the context otherwise requires, be taken to be a reference to this Act.
- (4) Anything done or omitted to be done under the repealed Act before the commencement of this Act shall, to the extent that it could have been done or omitted under this Act, be taken to have been done or omitted under this Act.
- (5) Any proceedings, application or other matter commenced under the repealed Act but not concluded before the commencement of this Act may be continued and concluded under this Act, unless the Minister otherwise directs.
- (6) Any regulation, rule, order or notice made under the repealed Act and in force immediately before the commencement of this Act shall, so far as it is not inconsistent with this Act, continue in force as if made under this Act.

**SCHEDULE 1**  
**RESERVED SECTORS**

Sector	Description of reserved activities

**SCHEDULE 2**  
**RESTRICTED SECTORS**

<b>Sector</b>	<b>Description</b>	<b>Conditions</b>
Handicrafts	Production and sale of Tuvaluan handicrafts	Foreign investors may only invest in this sector if they enter into a joint venture or partnership with a local Tuvaluan investor to undertake the business activity for which they have received approval.
Traditional (local) Tuvaluan food	Preparation and sale of traditional (local) Tuvaluan food	Foreign investors may only invest in this sector if they enter into a joint venture or partnership with a local Tuvaluan investor to undertake the business activity for which they have received approval.
Virgin oil and red toddy	Production and sale of virgin oil and red toddy	Foreign investors may only invest in this sector if they enter into a joint venture or partnership with a local Tuvaluan investor to undertake the business activity for which they have received approval.

### SCHEDULE 3

#### CRITERIA FOR ASSESSMENT OF FOREIGN INVESTMENT

To approve an application for a foreign investment into Tuvalu, the Board shall be satisfied that:

- (1) The proposed investment would be beneficial to Tuvalu by providing for two or more of the following:
  - (a) a positive impact on the level and nature of economic activity in Tuvalu;
  - (b) the creation of employment for Tuvaluans;
  - (c) the acquisition of new skills or technology for Tuvaluans, or the transfer of technology to Tuvaluans; or
  - (d) a positive contribution to tax revenue or other Government revenue.
- (2) The proposed investment would be compliant with Tuvalu's domestic laws, regulations and policies.
- (3) The proposed investment would not have a negative impact on Tuvalu's environment, health, community, national identity or cultural values that outweighs the benefits that are assessed as likely to accrue to Tuvalu.
- (4) The proposed investment would support sustainable and inclusive development, and aligns with the government's priorities.
- (5) The proposed investment would not present unacceptable risks to Tuvalu's national security, including in relation to:
  - (a) critical infrastructure, such as energy, transport, communications, data storage or financial infrastructure;
  - (b) access to sensitive information or the ability to control sensitive information; and
  - (c) matters relating to Tuvalu's Exclusive Economic Zone, including the seabed.
- (6) The foreign investor is of good character as evidenced, among other things, by the declaration provided in the application in the form prescribed in Schedule {4}.

**SCHEDULE 4**

**APPLICATION FORM FOR FOREIGN INVESTMENT**

Instructions

Please read this form carefully. If you have any questions about how to complete the form, please contact the Tuvalu Foreign Investment Unit at .....

Please submit the completed form either in person or via email to:

*Director of Investment  
 Tuvalu Foreign Investment Unit  
 Department of Business and Investment  
 Tuvalu*

Email: .....

A fee of 1% of the investment value is payable with every application for an investment. The fee should be transmitted by bank transfer, with account details to be provided by the Tuvalu Foreign Investment Unit.

**Applicant information**

**Name:** Provide name of Applicant.

<b>Company:</b>	
<b>Natural person/s:</b>	

**Business operations:** Provide an overview of the Applicant’s business operations. In particular, include details about:

- (a) sectors in which the Applicant operates;
- (b) business activities that the Applicant undertakes;
- (c) markets in which the Applicant operates (countries and regions/cities);
- (d) number of years in business;
- (e) experience in other Pacific markets or small island states;
- (f) if relevant, the parent and other group members’ business operations.

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**Financial position:** Give a brief overview of the Applicant’s financial position for the last three years, including (as relevant) market capitalisation, gross revenue, net profit, net asset value. If the Applicant is an individual (or a group of individuals), provide a brief summary of the Applicant's financial position.

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**Address:** Intended address of Applicant in Tuvalu, if known.

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**Authorised / nominated contact person**

Title, first and last name:	
Position in foreign entity:	
Mailing address:	
Business phone:	
Mobile phone:	
Email address:	

**Ownership structure of Applicant:** please tick the structure that applies.

Sole proprietorship	
Partnership ( <u>attach</u> certified copy of the partnership agreement)	
Company ( <u>attach</u> certified copy of the company’s registration documentation)	
Joint venture ( <u>attach</u> certified copy of the joint venture agreement, and if one or more parties to the joint venture are companies, attach the documents required above)	
Other (please specify)	

**Details of owners:** please provide details below (add further lines if required).

If a sole proprietor or partnership, please provide details of individual owner/s.

If a company, please provide details of shareholders (including **beneficial owners\***) with a shareholding of greater than 5% in the Applicant.

**\*For beneficial owners** who are entities, include a description of the entity, including who owns/controls it, and if it is not possible to identify the individual, why this is the case.

Name	Address	Shareholding (%)	Description (if relevant)

**Management:** Please provide details of how the day-to-day operations of the Applicant would be managed, including a description of who would control significant capital and operating expenditure.

**Individuals with control:** Complete the following table for any individuals with control of the Applicant, including (as relevant) sole proprietors, partners, shareholders with over 5% holding, and directors.

Individual #1	
Full name (as it appears on passport)	
Position	
Date of birth (dd-mm-yyyy)	
Country of citizenship (if dual, list both)	
Current residential address	
Individual #2	
Full name (as it appears on passport)	

Position	
Date of birth (dd-mm-yyyy)	
Country of citizenship (if dual, list both)	
Current residential address	
<b>Individual #3</b>	
Full name (as it appears on passport)	
Position	
Date of birth (dd-mm-yyyy)	
Country of citizenship (if dual, list both)	
Current residential address	
<b>Individual #4</b>	
Full name (as it appears on passport)	
Position	
Date of birth (dd-mm-yyyy)	
Country of citizenship (if dual, list both)	
Current residential address	

**Involvement with local investors:** Will the Applicant be formally operating its business together with a  local Tuvaluan business, such as via a joint venture, partnership or otherwise?

Yes

No

If the answer above is yes, please provide details of the intended local involvement.

## Business activity and investment information

**Description of business activity:** please list and describe the activities to be undertaken by the Applicant. Please also attach a copy of a business plan for the investment.

**Restricted business activity:** Is any of the business activity to be undertaken a ‘restricted activity’ listed under Schedule 2?

Yes

No

If the answer above is yes, please provide details of the intended business activities.

**Expected value of the proposed investment:** Please provide details in the box below.

Expected total value of investment	\$AUD
Expected investment by overseas person/s	\$AUD
Expected investment by Tuvaluan citizen/s	\$AUD
Expected total value of fixed assets of the enterprise	\$AUD

## Additional information

**Employment:** Please provide an estimate of the proposed level of employment (if you expect the number of individuals employed to increase over time, please provide details):

Tuvaluan citizens	
Foreign citizens	

**New skills or technology for Tuvaluans:** Will the proposed investment provide new skills or technology for Tuvaluan citizens, or result in the transfer of technology to Tuvalu?

Yes

No

If the answer above is yes, please provide details below.

**Involvement in other businesses:** Are any of the owners (as listed above) currently involved in any other business in Tuvalu, or have they previously been involved in a business in Tuvalu?

Yes

No

If the answer above is yes, please provide details below:

**Bankruptcies:** Have any shareholders, partners or other persons associated with the Applicant been declared bankrupt in the past or currently undergoing bankruptcy proceedings, either under the laws of Tuvalu or any other country?

Yes

No

If the answer above is yes, please provide details below.

**Convictions:** Have any shareholders, partners or other persons associated with the Applicant been convicted of any crime, either in Tuvalu or any other country?

Yes

No

If the answer above is yes, please provide details.

## Documents

Please provide copies of:

Business plan

For each individual named in this application, a certified copy of the passport bio-page

For each individual named in the application, a police clearance report from the country where they have been residing for the last 12 months

Proof of company registration overseas (if applicable)

Shareholder agreement (if applicable)

Joint venture agreement (if applicable)

Copies of financial statements to support the financial position set out in the answer to question 3.

## Declaration

To be completed by individuals with control of the investment as listed in response to Question 9.

I/we, the undersigned, being duly authorised by the foreign investor, declare that the information contained in this application is correct and complete and I/we authorise the Tuvalu Foreign Investment Unit and the Foreign Investment Board to make all necessary inquiries and to conduct all necessary action in relation to this application.

Name	Position

Signed at: .....

this ..... day of ....., .....

Month

Year

**Signature**

**Name**

.....

.....

.....

.....

.....

.....

.....

.....

**SCHEDULE 5**

**INVESTMENT CERTIFICATE TEMPLATE**

Foreign Investment Board – Investment Certificate issued under section 21 of the *Foreign Direct Investment Act*

<b>Name of certificate holder</b>	
<b>Address (in Tuvalu)</b>	
<b>Registration number</b>	
<b>Description of business activity to which certificate applies</b>	
<b>Conditions on approval of investment</b>	
<b>Date of issue</b>	

Signature (Minister responsible for business and investment)

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**SCHEDULE 6**

**APPLICATION TO TRANSFER INVESTMENT CERTIFICATE**

**Name of Applicant:** Provide the name of the Applicant.

<b>Company:</b>	
<b>Natural person(s):</b>	

1. **Name of Transferee:** Provide the name of the proposed Transferee.

<b>Company:</b>	
<b>Natural person(s):</b>	

2. **Reason for proposed transfer of investment certificate:** Please explain why you wish to transfer the investment certificate.

3. **Change of management:** Will the proposed transfer result in a change in how the day-to-day operations of the investment will be managed?

Yes

No

4. If the answer to {2} is yes, please provide details of changes.

5. **New individuals with control:** Complete the following table for any new individuals who will have control of the Applicant as a result of the proposed transfer (including sole proprietors, partners, and shareholders with over 5% holding, and directors).

<b>Individual #1</b>	
Full name (as it appears on passport)	
Position	
Date of birth (dd-mm-yyyy)	
Country of citizenship (if dual, list both)	
Current residential address	
<b>Individual #2</b>	
Full name (as it appears on passport)	
Position	
Date of birth (dd-mm-yyyy)	
Country of citizenship (if dual, list both)	
Current residential address	
<b>Individual #3</b>	
Full name (as it appears on passport)	
Position	
Date of birth (dd-mm-yyyy)	
Country of citizenship (if dual, list both)	
Current residential address	
<b>Individual #4</b>	
Full name (as it appears on passport)	
Position	

## Foreign Direct Investment Act

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Date of birth (dd-mm-yyyy)	
Country of citizenship (if dual, list both)	
Current residential address	