

REPUBLIC OF KIRIBATI
(No. 5 of 2000)

I assent,

Beretitenti
Assented: 9th July 2000

**AN ACT TO AMEND THE FOREIGN INVESTMENT
ACT 1985 (No. 3 of 1985)**

Commencement:
2000

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 2000.

Amendment of section 2

- 2.** Section 2 of the Foreign Investment Act 1985 is amended in the definition by repealing the whole of the definition of “carrying on business” and substituting the following —

“carrying on business” means carrying on an economic activity and includes —

- (a) establishing or using a share transfer or share registration office; or
- (b) administering, managing or otherwise dealing with property, both real and personal, as an agent legal personal representative or trustee and whether by an employee, agent or other representative or otherwise; or
- (c) maintaining an agent or other representative for the purpose of soliciting or procuring business whether or not such agent or representative is continuously resident in Kiribati; or
- (d) maintaining an office, agency or branch in Kiribati; and excludes;
- (e) aid or development projects funded by foreign donors negotiated, arranged or contracted by or through the Government of Kiribati unless the project contractor is, at any time up to the completion of the project, registered by any other circumstances hereunder; and,

An enterprise shall not be regarded as carrying on business in Kiribati by reason solely that it

- (f) maintains a bank account;
- (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to any such debts;
- (h) conducts a transaction which is completed within a period of 31 days not being one of a number of similar transactions in a series; or,
- (i) collects information or undertakes a feasibility study.”

Insertion of new section 9A

3. There shall be inserted after section 9 of the Foreign Investment Act 1985 the following new section —

“Seeking Exemptions from requirements for foreign investments

9A.(1) Where a person submits an application for approval of foreign investment under section 9, such person may simultaneously apply to the Commission to be exempted also from any or all of the requirements for foreign investment under this Act.

(2) Upon receiving an application for exemption from the requirements for foreign investment under subsection (1), the Commission shall —

- (a) consider the application as whether or not an exemption as sought be granted; and
- (b) having considered the application, communicate its decision to the Minister; and

where the Commission proposes that an exemption as sought from any or all of the requirements or obligations for foreign investment be granted on such application under this Act –

- (c) give its reasons for its opinion; and
- (d) forward that decision together with the file and other documents on the matter to the Minister for presentation to the Cabinet for approval or disapproval as the case may be.

(3) Upon receiving the recommendations of the Commission under subsection (2), the Beretenti, acting in accordance with the advice of the Cabinet shall consider such recommendation and may in writing either approve or disapprove any or all of the recommendations of the Commission as the case may be.

(4) Where the Commission is not of the opinion that exemptions should be permitted, it shall communicate its decision to the applicant, who may request the Minister to seek review of the decision by the Beretitenti, acting in accordance with the advice of the Cabinet.”

FOREIGN INVESTMENT (AMENDMENT) ACT 2000

EXPLANATORY MEMORANDUM

1. The principal object of this short Act is to allow a foreign investor to apply to the Commission and then eventually to the Cabinet to be exempted from any or all of the requirements or obligations for a foreign investor under the Foreign Investment Act 1985.

Presently no such exemption may be granted either by the Commission or the Cabinet under the Foreign Investment Act. Yet there had been some occasion in the past when it was felt by the Authority that an exemption from the requirements for foreign or proposed investment for an investor would have been preferred or appropriate. However, because the Foreign Investment Act would not allow the granting of such an exemption at all no exemption therefore has ever been allowed up to now. (Section 3).

2. The Act further seeks to improve and clarify the meaning of the definition of “carrying on business” which appears to be unclear as it stands now. (Section 2)

Michael N. Takabwe
Attorney General
5 October 1999