

FIJI ISLANDS GOVERNMENT GAZETTE SUPPLEMENT

No. 5

FRIDAY 23RD JANUARY

2009

[LEGAL NOTICE No. 18]

FOREIGN INVESTMENT ACT 1999
(No. 1 OF 1999)

Foreign Investment Regulations 2009

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FOREIGN INVESTMENT ACT 1999
(NO. 1 OF 1999)

Foreign Investment Regulations 2009

IN exercise of the powers conferred on me by Section 19 of the Foreign Investment Act 1999, I make the following Regulations—

Citation and Commencement

- 1.—(1) These Regulations may be cited as the Foreign Investment Regulations 2009.
- (2) These Regulations come into force on the 16th January, 2009.

Definition

2. In these Regulations, unless the context otherwise requires—

“*operational date*” means the date in which the Foreign Investment Registration Certificate is issued;

“*implementation period*” means –

- (a) twelve months from the date the Foreign Investment Registration Certificate is issued, for foreign investors with a minimum investment financial threshold below \$2.5 million; or
- (b) eighteen months from the date the Foreign Investment Registration Certificate is issued, for foreign investors with a minimum investment financial threshold above \$2.5 million.

“*minimum investment thresholds*” refers to the owner’s contribution or paid up capital for companies in the form of cash, as stated with Column 2 of Schedule 1.

Reserved Activities

3. For the purpose of Section 5 of the Act, the following Activities are prescribed –

- (a) A Milk Bar or Cafeteria Business;
- (b) A Taxi Business;
- (c) A Kava Business;
- (d) Retail Sale Via Stalls and Markets;
- (e) A Handicraft Business;
- (f) Tailor Shops;
- (g) Repair of Personal and Household Goods;
- (h) A Plumbing Business;
- (i) An Electrical Business;
- (j) Plant Nursery and Care;
- (k) A Day-care Centre;
- (l) An Internet Café and Amusement and Gaming Centres;
- (m) Home-stay Lodging Services;

- (n) A Bakery Business, other than those operated within the vicinity of a hotel/resort and/or operated by foreign owned hotels/resorts;
- (o) Backpacker Operations;
- (p) A Nightclub, other than those operated within the vicinity of a hotel/resort and/or operated by foreign owned hotels/resorts; and
- (q) A Liquor Bar, other than those operated within the vicinity of a hotel/resort and/or operated by foreign owned hotels/resorts.

Restricted Activities

4.—(1) For the purpose of Section 6 of the Act, the direct or indirect carrying out of any aspect of business in a relevant activity in an economic sector specified in Column 1 of Schedule 1 is subject to the conditions specified in Column 2 of the Schedule opposite the name of that Sector.

(2) The minimum investment thresholds specified in Column 2 of Schedule 1 must be deposited in a local business bank account in a bank located in Fiji.

Forms

5.—(1) An application under Section 7(1) of the Act must be in the form set out in Part 1 of Schedule 2.

(2) A Certificate issued under Section 4 of the Act must be in the form set out in Part 2 of Schedule 2.

Fees

6.—(1) The fee for the purpose of Section 7(1)(d) of the Act is \$2500.00 (exclusive of Value Added Tax).

(2) The fee for the purpose of Section 9(4) of the Act is \$7.50 (exclusive of Value Added Tax).

(3) The fee for the purpose of Section 15(3)(c) of the Act is \$100 (exclusive of Value Added Tax)

Publication Available for Inspection

7. A copy of the publication entitled "Fiji Standard Industrial Classification 2004" (FSIC 2004) must be available for public inspection free of charge during business hours at:

Fiji Islands Trade & Investment Bureau
Level 6
Civic Towers
Victoria Parade
Suva

Fiji Islands Trade & Investment Bureau
Level 1
Suite 5
Popular Building
Naviti Street
Lautoka

Ministry of Industry, Tourism, Trade & Communications
 Trade Measurement Office
 Rupan's Building
 Nanuku Street
 Labasa

Transitional

8.—(1) All applications made after the 11th July 2008 will continue to be processed in accordance with conditions set out under the Foreign Investment Regulations 2008 [Legal Notice No.86].

(2) An application made after the 16th January 2009 will be processed in accordance with conditions set out in these Regulations.

Revocation

9. The Foreign Investment Regulations 2008 are revoked.

SCHEDULE 1

(Regulation 3)

RESTRICTED ACTIVITIES

	<u>Column 1</u>	<u>Column 2</u>
(1)	Fishing (FSIC Subclass 05001)	A foreign investor must have at least 30 % equity held by Fiji Citizen(s) and the foreign investor must have at least \$500,000 in owner's contribution or paid up capital for companies in the form of cash from the operational date, to be fully brought into Fiji within the implementation period.
(2)	Forestry (FSIC Subclass 02001, 02002, 02003 and 02005)	A foreign investor must undertake value adding and must have at least \$500,000 in owner's contribution or paid up capital for companies in the form of cash from the operational date, to be fully brought into Fiji within the implementation period.
(3)	Manufacturing	
	1) Manufacture of Tobacco Products (FSIC Subclass 16001)	A foreign investor engaging in the manufacture of tobacco products must use at least 75% locally grown and processed tobacco in all domestic cigarette production and must have at least \$500,000 in owner's contribution or paid up capital for companies in the form of cash from the operational date, to be fully brought into Fiji within the implementation period.
(4)	Tourism	
	1) Cultural Heritage (FSIC Subclass 92141 and FSIC Subclass 92321)	Any activity involving investment in the cultural heritage of the Fiji Islands must have at least \$500,000 in owner's contribution or paid up capital for companies in the form of cash from the operational date, to be fully brought into Fiji within the implementation period.
(5)	Services	

	1)	<p>Real Estate Management</p> <p>(FSIC Subclass 70101)</p>	<p>(i) A foreign investor engaging in real estate management and real estate agents must have at least \$1m in owner's contribution or paid up capital for companies in the form of cash from the operational date, to be fully brought into Fiji within the implementation period.</p> <p>(ii) A foreign investor engaging in the above paragraph (i), real estate management activities needs to be certified under the Real Estate Agents Act.</p> <p>(iii) A foreign investor engaging in real estate activity in renting out of homes/villas/apartments/bures to tourists only must have at least \$250,000 in owner's contribution or paid up capital for companies in the form of cash from the operational date, to be fully brought into Fiji within the implementation period;</p>
	2)	<p>Real Estate Development</p> <p>(FSIC Subclass 70101)</p>	<p>A foreign investor engaging in real estate development must have at least \$5m in owner's contribution or paid up capital for companies in the form of cash from the operational date, to be fully brought in Fiji within the implementation period;</p>
	3)	<p>Construction</p> <p>(FSIC Subclass 45201)</p>	<p>A foreign investor engaging in the construction industry must have at least \$1m in owner's contribution or paid up capital for companies in the form of cash from the operational date, to be fully brought into Fiji within the implementation period.</p>
	4)	<p>Earthmoving Business</p> <p>(FSIC Subclass 45101)</p>	<p>A foreign investor engaging in an earthmoving business must have at least \$1m in owner's contribution or paid up capital for companies in the form of cash from the operational date, to be fully brought into Fiji within the implementation period.</p>
	8)	<p>Inter-island Shipping and Passenger Service – exclusive of tourism support services</p> <p>(FSIC Subclass 61101)</p>	<p>A foreign investor engaging in inter-island shipping and passenger service must have at least \$500,000 in owner's contribution or paid up capital for companies in the form of cash from the operational date, to be fully brought into Fiji within the implementation period.</p>
	(6)	<p>All Other Activities</p>	<p>A foreign investor needs to have at least \$250,000 in owner's contribution or paid up capital for companies in the form of cash from the operational date, to be fully brought into Fiji within the implementation period for Activities not stated elsewhere.</p>

SCHEDULE 2
(Regulation 4)

PART 1

**APPLICATION FORM for
FOREIGN INVESTMENT REGISTRATION CERTIFICATE**

(Please read this Form carefully and ensure that you understand what is required to complete this Application Form)

(Note: Notes in italics are intended for general guidance only)

<u>PART A</u>	<u>FOREIGN INVESTOR INFORMATION</u>	<u>OFFICIAL USE</u>										
<i>(A 'foreign investor', as defined by Section 3(1) of the Foreign Investment Act 1999, is the business enterprise/entity itself, for example, a sole proprietorship, partnership, private company, public company, etc.)</i>												
1.	Proposed Name of the Business Enterprise/Entity:											
2.	Full Names (as in the Passport) and Current Address of all the Shareholders (please provide a Certified Copy of the Passport Bio-data Page for all the Names listed under this Section): <table border="1" data-bbox="577 1159 1287 1616"> <tr> <td data-bbox="577 1159 984 1276">Full Name:</td> <td data-bbox="984 1159 1287 1276">Date of Birth:</td> </tr> <tr> <td colspan="2" data-bbox="577 1276 1287 1364">Position (for example, Director and/or Shareholder):</td> </tr> <tr> <td colspan="2" data-bbox="577 1364 1287 1409">Country of Citizenship:</td> </tr> <tr> <td colspan="2" data-bbox="577 1409 1287 1528">Residential Address:</td> </tr> <tr> <td colspan="2" data-bbox="577 1528 1287 1616">% of Shares:</td> </tr> </table>	Full Name:	Date of Birth:	Position (for example, Director and/or Shareholder):		Country of Citizenship:		Residential Address:		% of Shares:		
Full Name:	Date of Birth:											
Position (for example, Director and/or Shareholder):												
Country of Citizenship:												
Residential Address:												
% of Shares:												
<i>(Persons associated with a foreign investor are defined by Section 3(2) of the Foreign Investment Act 1999. Please attach a separate page if more space is required to list all such persons.)</i>												
3.	Intended Address of the Project/Business Site:											

	<u>Lot Number:</u>	<u>Street Name:</u>	<u>Town/City:</u>	
(Under Section 7(2)(c) of the <i>Foreign Investment Act 1999</i> , a foreign investor must notify FTIB of a mailing address in Fiji at the time of Application for a Foreign Investment Registration Certificate (FIRC).)				
4.	Mailing Address in Fiji:			
	Authorised Contact Person:			
	Business Phone:		Fax:	
	Mobile:		Home Phone:	
	Email Address:			
	Postal Box/Lot Number:	Street Number and Name:	Town/City:	
5.	Mailing Address (Overseas):			
	Authorised Contact Person:			
	Business Phone:		Fax:	
	Mobile:		Home Phone:	
	Email Address:			
	Postal Box/Lot Number:	Street Number and Name:	Town/City:	
(Under Section 7(3) of the <i>Foreign Investment Act 1999</i> , a foreign investor must notify the Fiji Islands Trade & Investment Bureau (FTIB) of any change in the information the foreign investor provides in this Form, for example, the actual address when known.)				
6.	The Proposed Type of Business Entity of the Foreign Investor: (For example, sole proprietorship, partnership, private company, public company, etc.)			
7.	Are you involved in any other business enterprise/entity in Fiji or overseas? If yes, please provide the following details (wherever applicable): <u>Name of the Business:</u> <u>Name(s) of Partner(s)/Shareholder(s):</u>			

	<p>Business Activity:</p> <p>_____</p> <p>Foreign Investment Registration Certificate (FIRC) Number (if registered in Fiji):</p> <p>_____</p>	
8.	<p>Have you worked in Fiji before?</p> <p>If yes, please provide details of the <u>name</u>, <u>telephone contact</u> and <u>street address</u> of the company worked in.</p>	
9.	<p>Is the foreign investor or any person associated with the foreign investor a declared bankrupt, an undischarged bankrupt, under management and/or receivership and/or liquidation under the Laws of the Republic of the Fiji Islands or any other country?</p> <p>If yes, please provide details.</p>	
10.	<p>Has any of the shareholder(s) or anyone associated with the business been convicted of any crime?</p> <p>If yes, please provide details.</p>	

PART B		BUSINESS ACTIVITY INFORMATION	
11.	List all the activities to be undertaken using the descriptions set out in the <u>Fiji Standard Industrial Classification 2004</u> (FSIC 2004):		
	<u>Description of Activity (List 'Principal Activity' first)</u>		<u>FSIC Code</u>
<i>(Please refer to <u>Explanatory Note 1</u> for information on the FSIC 2004 and on how to determine the 'Principal Activity'. Please attach a separate page if more space is required to list all the activities to be undertaken.)</i>			
<i>(Please refer to <u>Explanatory Note 2</u> for information on <u>Reserved Activities</u>.)</i>			
12.	Is any of the business activity to be undertaken a Restricted Activity under Regulation 3 of the Foreign Investment Regulations 2008?		
	If yes, please provide details.		
<i>(Please refer to <u>Explanatory Note 3</u> for information on <u>Restricted Activities</u>.)</i>			
13.	Please provide the following:		
	Authorised Capital: F\$ _____ (minimum: F\$ 250,000 cash – inclusive of offshore branches)		
	<u>LOCAL</u>	<u>FOREIGN</u>	
	Issued Capital:	_____	_____
	Paid-up Capital:	_____	_____
	(For companies)		
	Loans:	_____	_____

	<p>Owner's Contributions: _____ (Other than companies)</p>							
<p>14.</p>	<p>Proposed level of total investment: _____ (minimum: \$250,000 cash)</p> <table border="1" data-bbox="567 475 1237 630"> <thead> <tr> <th data-bbox="567 475 796 533">YEAR 1 (F \$)</th> <th data-bbox="796 475 1019 533">YEAR 2 (F \$)</th> <th data-bbox="1019 475 1237 533">YEAR 3 (F \$)</th> </tr> </thead> <tbody> <tr> <td data-bbox="567 533 796 630"></td> <td data-bbox="796 533 1019 630"></td> <td data-bbox="1019 533 1237 630"></td> </tr> </tbody> </table> <p>Proposed level of employment: _____</p> <p>(Fiji Citizens) _____ (Foreign Citizens)</p> <p><i>(To qualify for a work permit, a foreigner/foreign investor needs to bring in at least \$50,000 in cash as equity investment from offshore. Funds brought into Fiji as equity should be transferred into the business enterprise's/entity's Fiji Dollar resident bank account in Fiji and not an offshore bank account.)</i></p>	YEAR 1 (F \$)	YEAR 2 (F \$)	YEAR 3 (F \$)				
YEAR 1 (F \$)	YEAR 2 (F \$)	YEAR 3 (F \$)						
<p>15.</p>	<p>Please identify the sources of funding for both, foreign and local partner(s)/shareholder(s):</p>							
	<p>Additional Important Information and Requirements for Applicants (to be provided with this Application).</p> <ol style="list-style-type: none"> Investors are encouraged to reserve their business name with the Registrar of Companies prior to being registered with FTIB. If a company is being listed as a Shareholder, then the name(s) of those associated with that Shareholding Company must be provided to FTIB. A copy of the Shareholders Agreement and a copy of the Declaration of Shareholders, witnessed/certified by a Justice of Peace, Lawyer and/or Chartered Accountant, are to be submitted if local equity contribution is required. A Certified Copy of the Passport Bio-data Page, together with a recent coloured passport size photo, of all those associated with the business must be provided. The Police Clearance Report from the country where you have been residing in the last 12 months or more is to be provided. Proof of company registration from abroad (if applicable) is to be provided. The granting of a Foreign Investment Registration Certificate (FIRC) does not qualify the investor(s)/company to qualify for or be automatically granted permits from the various approving agencies. 							

Note: Under the Foreign Investment Act 1999, providing false and/or misleading information could incur a maximum penalty of \$20,000 and result in the cancellation of the Foreign Investment Registration Certificate (FIRC).

DECLARATION

I/We, the undersigned, being duly authorised by the foreign investor, hereby declare that the information contained in this Application is correct and complete, and I/We authorise the Chief Executive Officer of the Fiji Islands Trade & Investment Bureau (FTIB) to make all the necessary enquiries and to conduct all the necessary checks in relation to this Application.

Name(s):

Position(s):

Signed at _____ this _____ day of _____ (year)

Signature(s):

Company Seal (if applicable): _____

Only fully completed, original and signed Application Forms, together with the full payment of a non-refundable Application Fee of F\$2,500 will be processed by FTIB.

The completed Form should be submitted either in person or by post to:

The Chief Executive Officer
Fiji Islands Trade & Investment Bureau (FTIB)
6th Floor
Civic Tower
Victoria Parade
Suva
Fiji

OR

P O Box 2303
Government Buildings
Suva
Fiji

Official Use

1. Does the foreign investor qualify for a Foreign Investment Registration Certificate (FIRC)?

YES

NO

If not, why?

Signature: _____

Date: _____

Registrar

2. DECISION:

Grant

Refuse

Signature: _____

Date: _____

*The Chief Executive Officer
Fiji Islands Trade & Investment Bureau (FTIB)*

PART 2

FOREIGN INVESTMENT REGISTRATION CERTIFICATE

FOREIGN INVESTMENT REGISTRATION CERTIFICATE

Registration Certificate Number: _____

By virtue of the Powers vested in me by Section 4(1) of the Foreign Investment Act 1999, I hereby grant this Certificate to:

to carry out business in the following relevant Activities:

Within FSIC 2004 Code:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

on the following conditions:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(if relevant activities are Restricted Activities)

and also subject to the provisions of the Foreign Investment Act 1999.

This Certificate is not transferable and remains valid until it is surrendered or cancelled.

Date of Issue: _____

Chief Executive Officer
Fiji Islands Trade & Investment Bureau

Made at Suva this 21st day of January 2009.

A. SAYED-KHAIYUM
Attorney General, Minister for Justice,
Public Enterprise, Electoral Reform and Anti Corruption,
Acting Minister for Industry, Tourism, Trade & Communication