



**REPUBLIC OF KIRIBATI**

**FOREIGN INVESTMENT ACT 2018**

**INVESTMENT APPEAL PANEL (RULES OF PROCEDURES) REGULATION 2021  
(SECTION 2)**

**NOTICE OF COMMENCEMENT DATE**

**IN EXERCISE** of the powers conferred upon me by section 2 of the Investment Appeal Panel Regulation, I hereby appoint the 6<sup>th</sup> Day of **May** to be the date on which the regulation shall come into force.

Dated the 6<sup>th</sup> day of May 2021

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**HONOURABLE BOOTII NAUAN**

Minister for Commerce, Industry and Cooperatives

Published at the Public Office of the Beretitenti this 8 day of  
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**DR NAOMI BIRIBO**  
Secretary to Cabinet



## FOREIGN INVESTMENT ACT 2018

### INVESTMENT APPEAL PANEL (RULES OF PROCEDURES) REGULATIONS 2021

In exercise of the powers conferred by Section 31 of the *Foreign Investment Act 2018*, the Minister acting in accordance with the advice of the Cabinet, hereby make the following Regulations.

#### PART I - PRELIMINARY MATTERS

##### 1. Short Title

These Regulations may be cited as the *Foreign Investment Appeal Panel (Rules of Procedures) Regulations 2021*.

##### 2. Commencement

These Regulations shall come into force on the date appointed by the Minister by notice.

##### 3. Interpretation

For the purpose of these Regulations, unless otherwise requires:

“**Act**” shall mean the Foreign Investment Act 2018;

“**Appellant**” shall mean a foreign investor who has initiated an appeal against a decision of the Registrar under section 28(1) of the Act;

“**Application**” shall mean an application for review or appeal against a decision of the Registrar;

“**Investment Appeal Panel**” or “**Panel**” shall mean the body established by the Minister under section 27 of the Act to consider appeals against the decision of the Registrar;

“**Minister**” shall mean the Minister for the Ministry responsible for administering investment matters;

“**Ministry**” shall mean the Ministry administering investment matters;

“**Registrar**” shall mean the Registrar of Foreign Investment as appointed under the Act;

“**Secretariat**” shall mean the Investment Promotion Division established under section 6 of the Act;

**“Secretary”** shall mean the Secretary for the Ministry responsible for administering investment matters; and

**“Statement of Appeal”** shall mean an application for review or appeal stated under section 28(2) of the Act, in the form prescribed as Annex A of this Regulation.

#### **4. Objective and Functions**

(1) The Investment Appeal Panel is established under section 27 of the Act to consider and determine applications for reviews or appeals in line with its objectives and functions stated under the Act.

(2) The Panel shall apply the objects stated under section 4 of the Act, in the execution of its functions under this Regulation.

### **PART II - ADMINISTRATION**

#### **5. Investment Appeal Panel Meetings**

(1) Subject to section 28(5) of the Act, the Investment Appeal Panel shall hold a General Meetings at least once every quarter.

(2) Special meetings of the Panel may be held at any time where there is an application or applications that has been received by the Chairperson of the Investment Appeal Panel that requires urgent consideration and determination by the Panel before the next General Meeting scheduled under the preceding rule.

#### **6. The Secretariat**

The Secretariat shall be responsible for the following:

- (a) provide logistics support and any reasonable secretariat services that may be required by the Panel in the execution of its duties under this Regulation and the Act;
- (b) receive any application for review or appeal on behalf of the Chairperson of the Panel; and
- (c) notify the Chairperson of the Panel of any application received from any appellants.

#### **7. The Chairperson**

(1) The Minister shall appoint a Chairperson of the Panel.

(2) The Chairperson shall be responsible for the following:

- (a) receive applications and tabling the applications for consideration by the Panel in order of the dates of the application received for the next scheduled meeting of the Panel;

- (b) convene any meeting scheduled under rules 5(1) or (2) in consultation with the Secretary of the Ministry upon written notices sent to all members of the Panel at least three (3) working days prior to the date of the meeting and specifying the date and place of the meeting and attaching the meeting agenda and related materials;
- (c) chairing the Panel meetings;
- (d) establishing the agenda for the Panel meetings;
- (e) ensure that the decisions of the Panel are implemented by the Ministry;
- (f) ensure that the business of the Panel is well organised and that the Panel discharges its duties efficiently and transparently;
- (g) is the spokesperson for the Panel;
- (h) work closely with the Secretariat to ensure at all times that the Panel members are fully facilitated to perform their duties under this Regulation and the Act;
- (i) carry out any and all responsibilities of the Chairperson set forth in other provisions of this Regulation and the Act;

#### **8. Application fee**

There shall be a fee of three hundred dollars (\$300) for an application of review or appeal which shall be paid to the Account division of the Ministry and the receipt shall be attached with the application as proof of payment.

### **PART III - APPEAL**

#### **9. Appeal Process**

- (1) Any application for review or appeal shall be in a Statement of Appeal prescribed under Annex A of this Regulation and filed within three (3) months of the date of the decision of the Registrar against which the application is made.
- (2) Any application made under the preceding rule shall be addressed to the Chairperson of the Investment Appeal Panel and submitted to the Secretariat at the address of the Ministry.
- (3) An Appellant shall file the Statement of Appeal and attach any necessary documents to support his or her application.
- (4) In case of an incomplete application, the Panel shall request the appellant in writing to submit within ten (10) working days, a complete application and where the appellant fails to do so without providing reasonable excuse, the application shall be deemed to have been abandoned.



(5) Upon receipt of a completed application under (2) or (4) of this rule, the Chairperson shall table the application on the agenda for the next scheduled meeting of the Panel.

(6) Once an application has been tabled under rule 7(2) or 9(5), the decision of the Registrar against which the application is made, shall be suspended until the Panel has considered and determined the application.

#### **10. Statement of Appeal**

(1) A complete Statement of Appeal shall state;

(a) the name and contact details of the appellant;

(b) the Registrar's decision being contested;

(c) a clear statement of the relevant facts in chronological order, the relevant arguments for the appeal, as well as any relevant documents supporting the facts or arguments;

(d) a description of the specific remedy requested; and

(e) a signature of the appellant.

(2) a statement of appeal shall not exceed ten (10) one-sided double-spaced pages except that a longer statement or application may be submitted by the appellant upon request by the appellant and approval by the Panel.

#### **11. Determining the merits of the appeal**

(1) When determining the application, the Panel may consider the following issues:

(a) All and any information received and considered by the Registrar in reviewing and deciding on the appellant's application for investment; and

(b) Whether the Registrar complies with the objects and procedure of the Act when making a decision on the appellant's application for investment.

(2) Where absolutely necessary, the Panel may request a written statement from the Registrar to clarify some issues that are not clear from the information received under (1) of this rule.

(3) Where absolutely necessary, the Panel may require any person to attend and give evidence or make representation before it on any matter concerning the appeal.

(4) The Panel shall dismiss an application for review or appeal on the grounds stated under section 28(6) of the Act, if the Panel reasonably believe that;

(a) the application is vexatious, or

(b) there is no reasonable prospect of making a decision.

## **12. Outcomes of Appeals**

(1) The investment Appeal Panel may if it determines that there is merit in the application for review or appeal, order one or more of the following remedies:

- (a) Recommend the annulment in whole or in part of any act or decision of the Registrar.
  - (b) Recommend a re-evaluation of an application for investment, specifying the grounds for the recommendation.
  - (c) Issue an order where the Registrar did not issue a decision within the required time limit.
- (2) The Panel must provide its decision and reasons for its decision in writing to the Appellant and the Secretary of the Ministry.

## **13. Withdrawal of an appeal**

- (1) An appellant may withdraw his or her application for review or appeal at any time prior to being notified that the Panel has made a decision on his or her application.
- (2) Withdrawal of an application must be in writing and signed by the appellant.

## **PART IV – MISCELLANEOUS**

### **14. Conflict of Interest**

If a member of the Investment Appeal Panel has a conflict of interest in any specific application, he or she is required to disclose the conflict to the Panel and not take part in the consideration or discussion of the specific application in line with section 27(8) of the Act.



## Appendix A

### Statement of Appeal

This submission may not exceed ten one-sided double spaced pages (not including attachments).

Name of Appellant (family name first): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

E-mail: \_\_\_\_\_ Telephone No. Office: \_\_\_\_\_

Telephone No. Private: \_\_\_\_\_ Name of Business: \_\_\_\_\_

Business activity: \_\_\_\_\_

Specify the Registrar decision you are contesting? (please attach a copy):

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Date of Registrar's decision: \_\_\_\_\_

What was the outcome of the Registrar's review?

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What remedy or remedies do you seek?

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**IMPORTANT:** Please state the relevant facts in chronological order and the relevant arguments for the appeal on (a) separate page(s). This explanation may not exceed ten one-sided, double-spaced pages typed in standard sized type face. Please attach supporting material as well as a copy of the request for review and decision issued by the Registrar as appropriate. Please number each attachment and include an index of attachments.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



## **THE INVESTMENT APPEAL PANEL**

### **TERMS OF REFERENCE**

#### **1. PURPOSE**

The Investment Appeal Panel is an appeal panel established by section 27 of the *Foreign Investment Act 2018*, with the following purposes:

- (a) To review the decision of the Registrar in regards to the proposals being submitted;
- (b) To issue orders in times where the Registrar fails to issue a decision within the required period of time that is 30 working days.

#### **2. MEMBERSHIP**

2.1 Members of the Investment Appeal Panel shall be appointed by the Minister responsible for administering investment matters.

2.2 There shall be four (4) members comprising of;

- (a) a Chairperson;
- (b) a qualified lawyer;
- (c) a representative of the private business sector; and
- (d) a representative of the non-government organization sector.

2.3 The members shall hold office for three (3) years and are eligible for reappointment.

2.4 The Investment Appeal Panel shall be quorum if at least three (3) members are in attendance in any meeting of the Panel.

#### **3. TERMS OF REFERENCE**

The Investment Appeal Panel (Rules of Procedures) Regulation 2021 attached at Annex 1, prescribed the Rules of Procedures for the Investment Appeal Panel. In line with this prescribed Rules, the Investment Appeal Panel shall have the following roles and responsibilities;

- (a) examine the written statement of appeal and other documents associated with the application;
- (b) Undertake any further investigation and deliberation which it considers necessary as soon as reasonably practicable. This may involve obtaining documents from the Registrar or any other relevant parties or require any person to attend and give evidence or make representation before it on any matter concerning the appeal;
- (c) deliver a decision or course of action within the timeframe stipulated under the *Foreign Investment Act 2018*;
- (d) if a member has a conflict of interest that would render them unsuitable to hear any of the applications or submission matters, he or she to disclose the conflict of interest;
- (e) treat all matters and issues discussed within the meeting as confidential;

- (f) Come to a decision by consensus on the application for review or appeal tabled in the meeting. In the event consensus cannot be obtained, a vote will be called for by the Chairperson where the majority decision will prevail;
- (g) be familiar with the *Foreign Investment Act 2018*, its Regulation and other relevant Acts;
- (h) apply the principle of fairness and be neutral and objective in making a decision on any application or submission tabled in the meeting;
- (i) provide in writing, its decision to the Appellant, the Secretary of the Ministry responsible for administering investment matters and the Registrar, and
- (j) Carry out any other obligations that may be necessary in accordance with the *Foreign Investment Act 2018*, its Regulation and other relevant Acts.

#### **4. MEETINGS**

- (a) The Chairperson of the Investment Appeal Panel shall convene a General Meetings and Special Meetings as the case may be, in accordance with the prescribed Rules of Procedure.
- (b) Minutes of the meetings will be recorded by the Secretariat and kept for the Investment Appeal Panel by the Secretariat.
- (c) The members' allowances and expenses associated with carrying out their duties may be paid out of the consolidated fund at a rate of AUD\$55.00 for the Chairperson and AUD\$50.00 for a Member or where the Chairperson or any member is a Public Officer, the amount of the sitting allowance is as fixed by Te Beretitenti, acting in accordance with the advice of the Cabinet, under the *Public Officer (Special Provisions) (Repeal) Act 1996*.

#### **5. AMENDMENTS**

The Secretary of the Ministry responsible for administering investment matters may amend the Terms of Reference in consultation with the members of the Investment Appeal Panel and any relevant stakeholders, whenever it is considered necessary.