FOREIGN INVESTMENT BOARD

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Vice Chairwoman
Susan Ngirausui

Members
Barbara Tulop
Ephraim Ngirachitei
Quincy Kuniyoshi
Stephanie Nakamura

Investigators
Ellison Ellis
Jolanda Warren
Jade Misech

November 19, 2020

Hon. Charles I. Obichang
Mr. Kione Isechal
President-Elect Whipps' Transition Team
Koror, Palau 96940

RE: Foreign Investment Board Transition Report

Dear Minister Obichang and Mr. Isechal:

On behalf of the Foreign Investment Board, I am pleased to submit the attached transition report from the Foreign Investment Board (FIB).

The FIB is responsible for approving and monitoring private foreign investment in the Republic, and enforcing the Foreign Investment Act through administrative penalties. The Board and its office are created and governed by the Foreign Investment Act, codified at Chapter 1 of Title 28 of the Palau National Code, and implementing regulations. Although it sits within the Office of the President, the Board has its own staff composed of three investigators and three administrative support personnel; the positions of executive director and legal counsel have been vacant for some time.

There are serious challenges facing the FIB right now. The office itself has never undergone a comprehensive modernization in order to digitize its records and procedures; despite being the gateway for private foreign investment in Palau, the FIB no longer has an active website to provide information to potential investors, or to accept applications and fees through the internet. All records are maintained on paper without backups and there is no electronic document management system in place.

It is also no secret that Palau's economy is currently in dire straits. As a result of the lack of tourism since March of this year, many companies are struggling to survive. FIB has done what it can to help local companies by permitting the deferral of the annual foreign worker fee, but its hands are largely tied by the Foreign Investment Act. Unfortunately, many companies are losing the fight and are closing, including companies that have been operating in the Republic for

decades. The FIB believes that urgent action to support local businesses and to reopen the economy must be taken.

As the enclosed transition report details, there are several specific actions that can be taken to improve the FIB and its ability to support private foreign investment in Palau. First, the office needs to be modernized and digitized through the acquisition of computer software, the creation of a website, and staff with appropriate training. Second, the Foreign Investment Act needs to be amended in order to remove detrimental restrictions and revise policies that are permitting abuse to occur. Together with amendments to the Foreign Investment Act, certain other labor and immigration laws should also be revised. Third, the Board needs additional resources so that it can engage in appropriate marketing of Palau to the international business community.

The FIB looks forward to working with President-elect Whipps and his Administration to support, diversify, and grow Palau's economy.

Sincerely,

Fermin Meriang
Chairman
Foreign Investment Board

TRANSITION REPORT
FOREIGN INVESTMENT BOARD

Prepared: November 19, 2020

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I. Current Mission Statement and Vision

The mission of the Foreign Investment Board is to license, investigate, regulate, and monitor foreign investments for the long-term benefit of the Republic of Palau.

The Foreign Investment Board will promote sustainable economic growth and a diversified economic base by welcoming responsible foreign investors and ensuring compliance with existing laws and regulations.

II. Citations to Enacting and Governing Legislation and Promulgated Regulations

The Foreign Investment Act, codified at Chapter 1 of Title 28 of the Palau National Code.

Regulations Implementing the Foreign Investment Act (Adopted Sept. 30, 2020; Effective Oct. 30, 2020).

III. Summaries of Current Key Agency Priorities

The Foreign Investment Board does not currently have any specific priorities with respect to its substantive mandate.

With respect to Board operations, though, the Board does see the digitization and modernization of its operations and records as a key priority.

IV. Current Areas of Responsibility

The Foreign Investment Board is responsible for the functions set forth in 28 PNC § 104(a):

(1) to review, evaluate, and approve applications and proposals for foreign investment approval certificates;

(2) to monitor and enforce compliance with the terms and conditions of any foreign investment approval certificate granted under this chapter;

(3) to monitor and perform spot inspections of any business enterprises by the Board or its designees to enforce compliance with the provisions of this chapter, including by:

> (A) making unannounced on-site inspections or spot checks of the business premises of grantees, applicants, and other business enterprises which the Board has reason to believe are operating as front businesses, or otherwise reasonably believes to be in violation of the provisions of this chapter; and
>
> (B) issuing an administrative summons or subpoena to obtain information, statements, or documents reasonably related to the investigation;

(4) to review the procedures and regulations of the Board, and all other regulations governing or proposing to govern foreign investments, and advise the President and Olbiil Era Kelulau from time to time on matters related to the implementation and recommendations for improvement of this chapter and the regulations issued under this chapter;

(5) to represent the Republic at conferences, meetings, gatherings, and other forums on matters pertaining to foreign investment;

(6) to submit an annual report to the President and the Olbiil Era Kelulau on the working of this chapter as prescribed in section 115;

(7) to seek out foreign grant and technical assistance to aid it in carrying out its duties and responsibilities;

(8) to hold administrative hearings on contested matters arising under this chapter. Such hearings on contested matters will be conducted in accordance with the Administrative Procedures Act, and are subject to judicial review. All decisions of administrative hearings must be made in writing;

(9) to investigate suspected front businesses, irrespective of nominal ownership, including but not limited to the initiation of proceedings under section 120(d);

(10) to bring civil actions directly in the Trial Division of the Supreme Court of the Republic to enforce the provisions of this chapter;

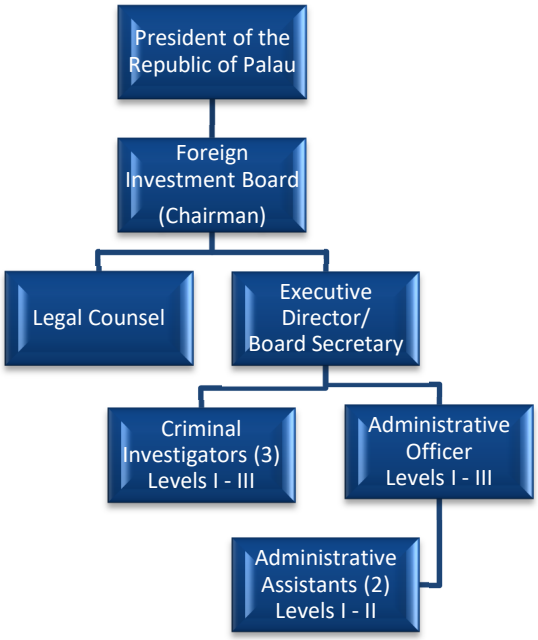
(11) to promulgate regulations to effectuate any provisions of this chapter;

(12) to promulgate regulations setting the minimum employment requirement applicable under section 106(a)(2), either generally or on a sector-by-sector basis;

(13) to select and publicly endorse one or more reputable and independent accommodations rating or classification system(s) for use in evaluating applications for foreign investment approval certificates that are subject to section 107(b) of this chapter; and

(14) to perform such other duties and functions falling within the purview of this chapter, or as may be entrusted to it by the President.

V. Current Organizational Charts and Key Personnel in each Position



Members of the Board:	
Chairperson:	Fermin Meriang (Term Expires: Aug. 3, 2021)
Vice Chairperson:	Susan Ngirausui (Term Expires: Aug. 3, 2021)
Members:	Barbara Tulop (Term Expires: Apr. 18, 2022)
	Ephraim Ngirachitei (Term Expires: Dec. 17, 2022)
	Quincy Kuniyoshi (Term Expires: Jan. 21, 2023)
	Stephanie Nakamura (Term Expires: Jan. 21, 2023)
	[Vacant]
Executive Director/ Board Secretary:	[Vacant] [Fermin Meriang has been serving as Acting Executive Director]
Legal Counsel:	[Vacant] [Daniel Mandell, Legal Counsel to the Office of the President, has been serving as Acting Legal Counsel]
Administrative Officer:	Margie B. Carlton
Criminal Investigators:	Ellison Ellis Jolanda Warren Jade Misech
Administrative Assistants:	Cassa Leah RellangMasayuki Jalaila Sukuko Tkel

VI. Lists of Political Appointee Positions that Need to be Filled

Members of the Board are appointed by the President with the advice and consent of the Senate. (28 PNC § 104(b)). At present, there is one vacancy on the Board.

VII. Budget

The Board's FY20-21 budget is $217,000.00.

VIII. Lists and Descriptions of Major Assets (including boats/cars, machinery, and other equipment)

- Assorted Office Equipment, incl.:
  - Computers
  - Printers
  - External Hard Drives
  - Fax Machine
  - Copier (Canon Image Runner 2525)
  - Desks
  - Filing Cabinets (11)
- Assorted Kitchenette Equipment, incl.:
  - Refrigerator
  - Microwave
- Digital Cameras
  - Nikon D35
  - Sony
- Cars
  - Nissan Rogue
  - Mazda Demio
  - Nissan X-Trail
- Mobile Phone SIM Cards (12)

IX. Descriptions of Services, Programs, Tasks, and Activities Provided and/or Performed

The Foreign Investment Board's activities cover the full lifespan of a foreign-owned company that operates in Palau. The Board's involvement begins with receipt of an application for a Foreign Investment Approval Certificate, which is reviewed and granted by the full Board. The Board continues to monitor the operations of foreign-owned enterprises through annual reporting requirements and spot checks by investigators. The Board's investigators also have the statutory authority to conduct interviews and subpoena records. The Board reviews reports from the investigators and, where appropriate, imposes sanctions consistent with the Foreign Investment Act. Finally, when a foreign-owned business ceases operations, the Board is responsible for ensuring all debts to government offices, utility companies, and others on-island are satisfied.

X. Project and Contract Checklists with Critical Dates and Budgets/Costs

The Foreign Investment Board does not currently have any ongoing projects or contracts with external vendors.

XI. Existing Major Agreements and Ongoing or Outstanding Major Negotiations with Foreign Governments and/or Other Internal and External Institutions and Non-Profit Organizations

The Foreign Investment Board does not have any major agreements or ongoing negotiations with foreign governments and/or other internal or external institutions or non-profit organizations.

Earlier this fall, the Board submitted an application to the Japan International Cooperation Agency (JICA) for a technical assistance project. The application seeks assistance with reducing barriers to foreign investment by increasing accessibility to information and modernizing the operations of the Board's office, including through the digitization of records and materials. If the project is approved it will not begin until late in 2021.

Additionally, the Office of the President has agreed to work with a group of graduate students at Harvard University's Kennedy School of Government on a Policy Analysis Exercise. The students will be completing a research project to analyze Palau's economy with respect to foreign investment, and to make specific policy recommendations on how to diversify and bolster foreign direct investment in the Republic. The final project should be complete by May 2021.

XII. Immediate, Medium, and Long-Term Challenges, and Concrete and Actionable Solutions, and Recommendations

Challenges

The challenges facing the Foreign Investment Board can be broken into four categories. First, the office requires modernization and digitization. At present, the office operates almost entirely on paper and lacks a centralized document management system. Records are maintained in filing cabinets without backups, and performance data is collected, if at all, in *ad hoc* Excel spreadsheets and Word documents. The Board no longer maintains a website and does not have the ability to accept applications electronically. This situation makes it harder for potential foreign investors to learn about investing in Palau and to apply for a Foreign Investment Approval Certificate; it makes it harder for the Board to operate efficiently and securely; and it makes it harder to be able to evaluate the Board's operations. Similarly, the lack of a permanent executive director and lack of formal training for staff limits the operational capabilities of the office.

Second, the Board's ability to conduct investigations is hampered by the fact that its investigators have not been permitted to be deputized. As a result, they cannot carry firearms for self-protection, nor perform arrests when they encounter illegal activity.

Instead, the Board is reliant on other law enforcement agencies to provide assistance on an as-needed basis. However, such assistance has not always been forthcoming, and, on more than one occasion, has actually led to investigation targets being tipped off.

Third, the current economic environment in Palau is moribund. The Board has begun to see an increasing number of companies cease operations and leave Palau. Although this is largely a result of the ongoing COVID-19 pandemic, the Board had identified problems with the investment environment prior to the onset of the pandemic. For example, the practical effect of the Foreign Investment Act's restriction on foreign ownership in certain economic activities has led to the use of 'front' businesses and 'consultants', defeating the law's purpose. The Board does not believe that Palau can wait until the pandemic is over in order to take action. It is necessary to find a way to immediately spur new economic activity in order to save what remains of Palau's private sector and to make Palau a more attractive environment for foreign investment, including by amending the Foreign Investment Act.

Fourth, the Board's responsibility for promoting foreign investment in Palau is hampered by a lack of resources and expertise. Palau needs to compete with similar island states around the world. At present, though, the Board does not have a comprehensive plan based on a thorough comparative study of similar agencies in other countries. Moreover, the Board does not have any staff with experience in international marketing for the purpose of attracting foreign direct investment.

<u>Recommendations</u>

- Modernize and Digitize Office Operations; Increase Capabilities with New Staff and Training:
    - Acquire and/or design an e-solution to digitize all records;
    - Acquire and/or design a document management system (DMS) to centralize all investor information;
    - Create a robust, public-facing website featuring all relevant information for potential investors and the ability to accept applications and fee payments online;
    - Aggressively recruit a new executive director and legal counsel, including by looking off-island;
    - Recruit new staff with experience in international marketing;
    - Provide training for existing staff;
    - Increase compensation and ancillary benefits for board members and staff;
- Deputize Investigators;
- Amend the Foreign Investment Act (Title 28, Chapter 1, Palau National Code):
    - Amend 28 PNC § 105 to remove the prohibition on foreign investment and ownership in specific business activities; permit the Board to have

discretion in granting Foreign Investment Approval Certificates to investors seeking to operate in the currently protected activities;

- Amend 28 PNC § 106(b)(5) to lengthen the time for which an investor cannot transfer ownership (currently only one year);
- Amend 28 PNC § 106(b)(4) to require that the foreign investor's bank account contain a sufficient deposit (determined by the Board) to provide security for all creditors in the Republic;
- Amend 28 PNC § 116 to permit the Foreign Investment Board to retain a portion of the fees it collects (including application fees, annual fees, and penalties) in order to cover administrative costs;
- Repeal 28 PNC § 127 to permit long-established companies in Palau to continue operations;
- Create a new provision linking lease agreements with Foreign Investment Approval Certificates in order to prevent foreign investors from tying up land without development for an extended period of time;

- Revise labor and immigration laws that, in practice, favor the hiring of foreign workers at the expense of Palauan labor;
- Revise the Investor Visa rules to reduce the number of individuals permitted to enter Palau per visa and initially award on a provisional basis pending commencement of proposed business operations;
- Increase incentives for Palauans to stay on-island and work in the private sector;
- Develop and implement a comprehensive plan for marketing Palau to potential foreign investors;
- Develop and implement a government-wide policy for the handling of confidential and sensitive personal information;