

Samoa

FOREIGN INVESTMENT ACT 2000 (2000)

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<https://investmentpolicy.unctad.org>

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To be consulted here: <https://samoa.tradeportal.org/Regulations/Details?lawId=3&l=en>

SCHEDULE 2

FOREIGN INVESTMENT ACT 2000

2000 No. 3

AN ACT to promote foreign investment and to regulate such investment by guaranteeing the rights of citizens to participate in the economy of Samoa.

[Assent and commencement date: 15 June 2000]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement –

- (1) This Act may be cited as the Foreign Investment Act 2000.
- (2) This Act comes into force on the date that it is assented to by the Head of State.

2. Interpretation –

- (1) In this Act, unless the contrary intention appears:

“business” or “business or economic activity” has the same meaning as in the Business Licences Act 1998;

“certificate” means a foreign investment registration certificate issued under section 8 and renewed under section 8B;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry;

“citizen” means a person who is a citizen of Samoa by virtue of the Citizenship Act 2004;

“Committee” means the Foreign Investment Advisory Committee established under section 6A;

“CPC Code” means the United Nations Central Product Classification Code as applied by the Ministry; “Investment Report” means the Annual Foreign Investment Report described in section 11A;

“Ministry” means the Ministry of Commerce, Industry and Labour;

“Minister” means the Minister responsible for Trade, Commerce and Industry;

“non-citizen” means any person who is not a citizen; “Prohibited List” means the list of business or economic activities in the Schedule to the Business Licences Act 1998;

“Register” means the register maintained under section 10; “Reserved List” means the list of business or economic activities in Schedule 1;

“Restricted List” means the business of economic activities, and the conditions that are applicable to them, prescribed under section 4.

- (2) For the purposes of this Act, “foreign investment” is the involvement of any non-citizen, or any company in which a non-citizen holds a shareholding, in any business or economic activity in Samoa for which a business licence is required by the Business Licences Act 1998:

PROVIDED THAT the provisions of this Act do not apply to trustee companies licensed under the Trustee Companies Act 1988, international companies or foreign companies registered under the International Companies Act 1988, international insurance companies licensed under the International Insurance Act 1988 or international banks licensed under the International Banking Act 2005, or any successor legislation to the above Acts.

(3) Despite subsection (2), any business in Samoa which is owned entirely by a citizen or citizens, but which operates under a franchise agreement with a non-citizen who is not resident in Samoa, shall not be regarded as “foreign investment” for the purposes of this Act:

PROVIDED THAT the Minister may deem such a business to be “foreign investment” if the Minister considers that the franchise agreement was entered into for the purpose of defeating the application of this Act.

(3A) An applicant with dual citizenship who decides to use his or her foreign citizenship other than Samoan citizenship is required to register under section 8.

(4) The lending of money by a non-citizen to a business owned and operated by a citizen, such loan to be repaid at a rate of interest rather than on the basis of a share of the business profits, shall not be regarded as “foreign investment” for the purposes of this Act.

3. Reserved List –

(1) The business or economic activities listed in Schedule 1 are reserved for citizens of Samoa exclusively, and no approval may be given under this Act, or any other law, for a non-citizen to own or participate in any business or venture that includes any of the activities in the Reserved List.

(1A) The business or economic activities listed in Schedule 1 are clarified under the CPC Code where applicable.

(2) [Repealed by the Foreign Investment Amendment Act 2015].

(3) Regulations may clarify any of the activities referred to in the Reserved List by the inclusion of further description or detail, which is taken to form part of Schedule 1.

(4) Regulations may provide the criteria and procedures for removing or adding an economic activity to the Reserved List in Schedule 1 and the Reserved List may be amended accordingly by regulations.

4. Restricted List –

(1) The business or economic activities listed in Schedule 2 may be undertaken by non-citizens only if they meet certain prescribed conditions, which may require any or all of the following:

(a) that there is a limit to the extent of foreign equity in such a venture by the requirement of mandatory joint venture which is owned exclusively by a citizen with a citizen or citizens;

(b) that there be a restriction on the amount of investments, set either as a minimum or a maximum level;

(c) that specified citizen employment targets be met;

(d) that the investment capital required for the business or economic activity be sourced from overseas, to any extent.

(1A) The business or economic activities listed in Schedule 2 are clarified under CPC Code where applicable.

(2) The conditions prescribed under subsection (1)(a) are set as a percentage of equity in the business which is to be held by citizens of Samoa, but nothing prevents the making of a Regulation that applies to a specific business venture or economic activity.

(3) The conditions prescribed under subsection (1)(b), (c) and (d) shall permit the Minister to set the levels and targets to apply to any specific business venture, after consulting with the Chief Executive Officer.

(4) A business or economic activity listed in Schedule 2 must, in addition to meeting the prescribed conditions, also satisfy all relevant requirements under any other relevant law before the business or economic activity may be undertaken.

(5) Regulations may provide the criteria and procedures for removing or adding an activity to the Restricted List in Schedule 2 and the Restricted List may be amended accordingly by regulations.

5. Activities not otherwise restricted –

Subject to this Act and any other law, any non-citizen may own or participate in any business or economic activity that is not:

- (a) reserved under section 3; or
- (b) restricted under section 4; or
- (c) prohibited under the Business Licences Act 1998.

6. Foreign investment registration –

(1) A foreign investment in Samoa, whether established before or after the commencement of this Act, is required to hold a foreign investment registration certificate issued under this Act.

(2) The certificate shall be in the prescribed form.

6A. Foreign Investment Advisory Committee –

(1) The Foreign Investment Advisory Committee is established.

(2) The roles of the Committee are:

- (a) to review the Reserved and Restricted Lists in accordance with the criteria and procedures set out in regulations; and
- (b) to review the criteria and procedures referred to under paragraph (a); and
- (c) to provide advice to the Minister regarding paragraph (a) or (b) or on any other related matter under this section.

(3) The Committee shall provide to the Minister advice concerning:

- (a) this Act and possible amendments of this Act; and
- (b) the administration of this Act; and
- (c) any other matter concerning this Act.

(4) The membership of the Committee comprises of the following:

- (a) the Chief Executive Officer, as Chairperson;
 - (b) the Chief Executive Officer of the Ministry responsible for finance, as Deputy Chairperson;
 - (c) the Attorney General;
 - (d) the Governor of the Central Bank;
 - (e) the Chief Executive Officer of the Ministry responsible for revenue;
 - (f) the Chief Executive Officer of the Ministry responsible for agriculture and fisheries;
 - (g) the Chief Executive Officer of the Ministry responsible for the Prime Minister and Cabinet;
 - (h) the Chief Executive Officer of the Ministry responsible for foreign affairs and trade;
 - (i) the Chief Executive Officer of the Samoa Tourism Authority;
 - (j) the President of the Samoa Chamber of Commerce and Industry Incorporated;
 - (k) the President of the Samoa Association of Manufacturers and Exporters Inc.
- (5) A member may nominate a representative from the member's organisation to attend a meeting of the Committee on the member's behalf if the member is unable to attend a meeting.
- (6) The Committee may allow a representative from other Ministries or private sector organisations that are not represented in the Committee to attend as observers at its meeting and to make presentations and take part in discussions as required.
- (7) The Chief Executive Officer shall convene a meeting of the Committee at least annually and thereafter as he or she considers necessary.

7. Functions of the Chief Executive Officer –

In relation to the registration of foreign investment in Samoa, the Chief Executive Officer is responsible for:

- (a) the coordination, establishment, maintenance and review of the—
 - (i) Reserved List; and
 - (ii) Restricted List; and
- (b) the receipt and processing of applications for Foreign Investment Registration; and
- (c) the issuing of certificates; and
- (d) the monitoring of foreign investment in Samoa.

7A. Functions of the Ministry –

- (1) In relation to foreign investment in Samoa, the functions of the Ministry shall include but are not limited to the following:
- (a) providing policy advice on foreign investment promotion and industry development to the Minister and Cabinet;

- (b) providing advice on the application of this Act and foreign investment schemes administered by the Ministry;
 - (c) consulting with relevant government and non-governmental organisations in relation to areas in paragraphs (a) and (b);
 - (d) providing advice to overseas bodies and agencies including regional and international organisations in relation to areas in paragraphs (a) and (b);
 - (e) monitoring and enforcing compliance with the requirements of this Act;
 - (f) coordinating or carrying out investigation relating to a foreign investment query or complaint;
 - (g) providing a Secretariat for the Trade, Commerce and Industry Development Board and the Foreign Advisory Committee;
 - (h) maintaining a register of foreign investors and their investments;
 - (i) coordinating information on the state of industry and economic development;
 - (j) consulting with Ministries and other relevant stakeholders on issues related to trade, commerce and industry;
 - (k) disseminating information on the functions of the Ministry on foreign investment and the related schemes administered by the Ministry;
 - (l) assessing and attending to the training needs of the Ministry on foreign investment;
 - (m) creating and updating foreign investment promotional tools for Samoa;
 - (n) engage in joint coordination with other Ministries and agencies in the facilitation of foreign investment activities that promote Samoa as an investment location;
 - (o) any other functions to implement the provisions of this Act.
- (2) Further functions of the Ministry in relation to foreign investment may be prescribed by regulations.

8. Receipt and approval of applications for foreign investment registration –

- (1) Upon receipt of an application for registration under this Act, in the prescribed form, the Chief Executive Officer shall consider the proposed business or economic activities against the Reserved, Restricted and Prohibited Lists following the relevant process prescribed by regulations, and:
- (a) issue within the prescribed time, a certificate if the application relates to business or economic activities that—
 - (i) are not included in the Prohibited and Reserved Lists; or
 - (ii) are included in the Restricted List, but which meet the conditions applicable to the proposed business; or
 - (b) advise the applicant that the application has been rejected on the grounds that the business or economic activities—

- (i) are included in the Prohibited, Reserved or Restricted Lists; or
 - (ii) are included in the Restricted List, and that the proposed business fails to meet the prescribed conditions.
- (2) A certificate issued under subsection (1)(a)(ii) shall have endorsed on it a list of the prescribed conditions.
- (3) If the Chief Executive Officer is unable to determine whether a proposed business will include a business or economic activity that is included in the Prohibited, Reserved or Restricted Lists, the Chief Executive Officer shall refer the matter to the Minister, whose determination in this respect shall bind the Chief Executive Officer.
- (4) Where a matter has been referred to the Minister under subsection (3) and any issue regarding the matter relates to the possible application of the Prohibited List, the Minister shall consult with:
- (a) the Commissioner for Inland Revenue;
 - (b) the Chief Executive Officer;
 - (c) the Attorney General; or
 - (d) any other Ministry or agency, which the Minister deems necessary before making a determination.
- (5) The Chief Executive Officer may delegate to an officer of the Ministry his or her powers under this section.
- (6) A certificate issued under this section is non-transferable.

8A. Confidentiality –

Information provided in an application shall be kept confidential and shall be used only for the purposes of this Act.

8B. Renewal of certificate –

- (1) The holder of a certificate may apply, in the prescribed form (“renewal application”) and accompanied by the prescribed fee, to the Chief Executive Officer to renew the certificate.
- (2) The renewal application is to be made at least three (3) months before the expiry of the certificate under section 9(1)(a).
- (3) Despite subsection (2), the Chief Executive Officer may, with good reasons provided by the holder of the certificate, accept and determine a renewal application that is made no later than 3 months after the expiry of certificate, otherwise the holder must apply for a new certificate.
- (4) Executive Officer may:
 - (a) renew the certificate, with or without conditions; or
 - (b) refuse to renew the certificate on any grounds specified under section 8(1)(b) or under any other provision of this Act or other enactment.

(5) If the renewal application is refused, the Chief Executive Officer must give the reasons and the grounds for refusal.

(6) Section 8(2) to (6) applies to this section with necessary modifications and adaptations.

9. Duration of certificates –

A certificate issued under section 8:

(a) is valid for 12 months from the date of the certificate unless otherwise renewed or terminated under this Act or by operation of any other enactment; but

(b) shall lapse after the expiration of not less than 2 years from the date of issue if, before that time lapses, the certificate holder has not communicated to the Chief Executive Officer reasons for the delay in the commencement of business.

10. Register of foreign investment –

A register of applications made and certificates granted under this Act shall be kept by the Chief Executive Officer pursuant to the process to be prescribed by regulations.

11. Reports by foreign investors –

It is a condition of a foreign certificate granted under this Act that the certificate holder provide a report of its operations, including an audited financial report, to the Chief Executive Officer no later than 6 months after the end of each financial year in order for the Chief Executive Officer to assess and report on the status of foreign investment in Samoa to Cabinet.

11A. Annual foreign investment report by the Chief Executive Officer –

(1) Within 6 months after the end of each financial year, the Chief Executive Officer shall provide the Minister with an Annual Foreign Investment Report.

(2) Without limiting its form and content, the Investment Report shall include a summary of the foreign investment climate and trends for the reporting period.

(3) The Minister may publish and distribute copies of the Investment Report through the Chief Executive Officer.

12. Cancellation of certificates –

(1) A certificate issued under this Act may be cancelled by the Chief Executive Officer if:

(a) any information given in the application for the certification was incorrect so as to create a false impression as to the ownership of the business or the nature of its activities; or

(b) the business carries on any activity that is included in the Prohibited List, Reserved List or Restricted List; or

(c) the business breaches any prescribed condition applicable to it; or

- (d) the Chief Executive Officer is satisfied that any participating citizen in the business is not being accorded the full rights as part-owner or equity-holder in the venture as purported in the application for a certificate or as required by any prescribed condition applicable to it.
 - (e) the business has not commenced operations within 2 years from the date the certificate was issued; or
 - (f) the business has ceased operations in Samoa; or
 - (g) the business has wound up under the provisions of any applicable law; or
 - (h) the holder of the certificate requests cancellation; or
 - (i) the holder of the certificate is convicted of an offence under any other law of Samoa; or
 - (j) the holder of the certificate becomes a Samoan citizen; or
 - (k) the holder of the certificate has acted in breach of the conditions for the Restricted List.
- (2) Where the Chief Executive Officer proposes to cancel a certificate or forms a view that there are grounds for a certificate to be cancelled, the Chief Executive Officer shall:
- (a) inform the certificate holder by notice in writing of the reasons for the proposed cancellation; and
 - (b) allow the certificate holder to make a written submission within 10 working days from the date of receipt of the notice.
- (3) After 5 working days from the date of receipt of the written submission from the certificate holder, the Chief Executive Officer shall:
- (a) make a decision whether to cancel or confirm validity of the certificate; and
 - (b) inform the certificate holder in writing of the decision and where applicable, the reasons for the decision and the certificate holder's right to appeal.
- (4) A decision under subsection (3) by the Chief Executive Officer to cancel a certificate comes into effect:
- (a) in the case of a certificate holder who does not exercise a right of appeal, 5 days after the decision has been made and notified;
 - (b) in the case of a certificate holder who lodges an appeal with the Court, the date upon which the appeal is determined or an appeal is withdrawn.
- (5) The Ministry shall publish in the Savali or any other local newspaper a list of the certificates cancelled under this section at the end of every financial year.

13. Rights of appeal –

- (1) An applicant whose application for a certificate has been rejected under section 8(b) may appeal in writing to the Minister against that decision and if the Minister is satisfied that no proposed activity is included on the Prohibited List or Reserved List, or that the prescribed conditions applicable to the activities will be complied with, the Minister may direct that the certificate be granted and registration effected.
- (2) A holder of a certificate that has been cancelled under section 12 may appeal to the Supreme Court.

14. Offences and penalties –

(1) Subject to this Act, it is an offence for a non-citizen or a company having a shareholder who is a non-citizen, to engage in or be employed at any business or economic activity in Samoa, which is:

- (a) specified in the Prohibited List or the Reserved List; or
- (b) specified in the Restricted List and in respect of which the prescribed conditions have not, at any time, been met; or
- (c) required by this Act to be registered but for which no certificate has been issued under this Act.

(2) Upon conviction of any offence under subsection (1) the Court may impose a fine not exceeding 500 penalty units.

(3) In addition to any other penalty imposed, upon conviction for any offence under subsection (1), the person or company so convicted shall have any certificate issued under this Act cancelled.

15. Investment guarantees –

Article 14 of the Constitution applies to all foreign investment in Samoa.

16. Settlements of disputes –

(1) The Arbitration Act 1976 has full effect in relation to disputes that involve foreign investors in Samoa.

(2) Subject to this Act and to any other law in Samoa, the Convention on the Settlement of Investment Disputes signed in Washington on 3 February 1978 and ratified by Samoa on 25 April 1978, has the force of law in Samoa.

17. Transitional arrangements –

(1) A business to which this Act applies and that is in operation as at the commencement of this Act is required to achieve compliance with the provisions of this Act within 12 months of the commencement date.

(2) The Minister may approve an extension of time under subsection (1) for any specific business but such extension shall not exceed a further period of 12 months.

18. Regulations –

(1) The Head of State, acting on the advice of Cabinet, may make all such regulations as are required to be made under this Act or as may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting this power, regulations may be made under this section for all or any of the following purposes:

- (a) the inclusion, deletion or clarification of any business or economic activity in the Schedules;

- (b) the types of business or economic activities to be included on the Restricted Lists and the conditions to attach to them;
- (c) the form of the certificate and any fees to be paid in relation to applications for or grants of certificates;
- (d) the time in which certificates must be issued;
- (e) the form of the register and the matters to be included in it;
- (f) fees for inspection of the register;
- (g) the form of reports to be submitted by foreign investors and the particulars to be included in them;
- (h) procedures for applying for amendment to certificates and entries in the register and the circumstances in which such applications may or must be made;
- (i) the service of notice made under this Act.

19. Monitoring –

(1) For the purposes of ensuring compliance with this Act, the Chief Executive Officer and officers of the Ministry authorised by the Chief Executive Officer have the following powers:

- (a) to require a holder of a certificate, or his or her agent, to provide written or oral answers to questions on any matter relevant to the provisions of this Act and regulations which the Chief Executive Officer or the officers may put to the holder of a certificate;
- (b) to require a holder of a certificate or his or her agent to produce to the Chief Executive Officer any document or record which is in the holder of the certificate's possession and is relevant to the provisions of this Act and regulations, whether such document or record is in written, printed, electronic or any other form;
- (c) subject to subsections (2) and (3), to enter any premises where the holder of a certificate conducts or is believed to conduct his or her business, without notice and with reasonable force where necessary, to conduct a search of the premises and to seize any document or record relating to the provisions of this Act and regulations, whether such document or record is in written, printed, electronic or any other form;
- (d) subject to subsections (2) and (3), to examine and access any computer or other electronic equipment, device or facility which is used or is believed to be used in any business conducted by or owned by the holder of a certificate, and to take copies of any document or record which may be stored within such computer or other electronic equipment, device or facility;
- (e) subject to subsections (2) and (3), to require any bank, financial institution, accountant or lawyer to produce any document or record in their possession or control concerning a business which is believed to be conducted by or owned by the holder of a certificate and to provide the Chief Executive Officer or officer with a copy of any such document or record if requested to do so, unless the information is subject to legal professional privilege.

(2) The powers in subsection (1)(c), (d) and (e) can only be exercised pursuant to a warrant issued by the Supreme Court.

(3) Despite subsection (2), where under the circumstances an immediate search is to be carried out and there is no time to apply for a search warrant, the written approval of the Attorney-General is required before the powers in subsection (1)(c), (d) and (e) can be exercised.

(4) The Chief Executive Officer or officers of the Ministry authorised by the Chief Executive Officer may be assisted by police officers in the exercise of the powers under this section.

(5) A person who hinders the Chief Executive Officer or officers of the Ministry authorised by the Chief Executive Officer in the exercise of their powers under this section commits an offence and is punishable, upon conviction, by:

(a) if the offender is a corporation, a fine not exceeding 100 penalty units; or

(b) if the offender is a natural person, a fine not exceeding 10 penalty units or imprisonment for a term not exceeding 1 year, or both.

SCHEDULE 1

(Sections 2 and 3)

RESERVED LIST

To be consulted here:

<https://samoa.tradeportal.org/Regulations/Details?lawId=3&l=en>

SCHEDULE 2

(Section 4)

RESTRICTED LIST

The direct or indirect carrying on of any aspect of business or activity in an economic sector specified in column 1 or economic sub-sector specified in column 2 is subject to the conditions specified in column 3.

To be consulted here: <https://samoa.tradeportal.org/Regulations/Details?lawId=3&l=en>

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