



FOREIGN INVESTMENT AMENDMENT BILL 2010

SAMOA

Arrangement of Provisions

- | | |
|---|--|
| 1. Short title and commencement | 10. Receipt and approval of applications for foreign investment registration |
| 2. Principal Act | 11. Insertion of new section |
| 3. Interpretation | 12. Duration of certificates |
| 4. Reserved List | 13. Register of foreign investment |
| 5. Restricted List | 14. Reports by foreign investors |
| 6. Activities not otherwise restricted | 15. Cancellation of certificates |
| 7. Insertion of new section | 16. Regulations |
| 8. Functions of the Chief Executive Officer | 17. Insertion of new section |
| 9. Insertion of new section | 18. Schedules |

2010 No.

A BILL INTITULED

AN ACT to amend the Foreign Investment Act 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 Amendment Act 2010.

(2) This Act commences on the date it is assented to by
the Head of State.

2. Principal Act – (1) In this Act, unless the context
otherwise requires “Principal Act” means the Foreign
Investment Act 2000.

3. Interpretation – (1) In section 2(1) of the Principal
Act, insert the following in correct alphabetical order:

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

“Investment Report” means the Annual Foreign
Investment Report described in section 11A”.

(2) For section 2(2) of the Principal Act substitute:

“(2) “Foreign investment” means the involvement
of:

- (a) a non-citizen, including a foreigner
who is granted permanent residence; or
- (b) a company or enterprise in which a
foreign investor holds more than 10% of the
total shares,

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 shall
not apply to trustee companies licensed under the
Trustee Companies Act 1987, international
companies or foreign companies registered under the
International Companies Act 1987, 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”; and

(3) After section 2(3) of the Principal Act insert:

“(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 of this Act.”;

4. Reserved List – (1) In subsections 3(1) and (3) of the Principal Act for every mention of “the Schedule” substitute “Schedule 1”.

(2) After section 3(3) of the Principal Act, insert:

“(4) The Reserved List in Schedule 1 may be reviewed and amended by regulations.”.

5. Restricted List – In section 4 of the Principal Act:

- (a) in subsection 1:
 - (i) for “Regulations may prescribe business and economic activities which” substitute “The business or economic activities listed in Schedule 2”; and
 - (ii) in paragraph (a), after “joint venture” insert “which is owned exclusively by citizens”; and
- (b) in subsection (2), after “business venture.” insert “or economic activity.”; and
- (c) after subsection (3), insert:

“(4) The Restricted List in Schedule 2 may be reviewed and amended by regulations.”.

6. Activities not otherwise restricted – In section 5 of the Principal Act:

- (a) in paragraph (a), for “Listed in the Schedule; or” substitute “Reserved under section 3; or”; and
- (b) in paragraph (b), for “Prescribed” substitute “Restricted”.

7. Insertion of new section – After section 6 of the Principal Act insert:

“6A. Foreign Investment Advisory Committee –

(1) The Foreign Investment Advisory Committee is established.

(2) The role of the Committee is to:

- (a) assess investment projects or proposals that fall outside the definition of the Reserved and Restricted Lists or cases referred to in section 8(3) of this Act;
- (b) review the Reserved and Restricted Lists; and
- (c) provide advice to the Minister on paragraph (a) or (b) above 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;
- (b) the administration of this Act; and
- (c) any other matter concerning this Act.

(4) The membership of the Committee shall be comprised of:

- (a) the Chief Executive Officer, who is also the Chairperson;
- (b) the Chief Executive Officer of the Ministry of Finance, who is also the Deputy Chairperson;
- (c) the Attorney General;
- (d) the Governor of the Central Bank;
- (e) the Chief Executive Officer of the Ministry for Revenue;
- (f) the Chief Executive Officer of the Ministry of Agriculture and Fisheries;
- (g) the Chief Executive Officer of the Ministry of Justice, Courts and Administration;
- (h) the Chief Executive Officer of the Ministry of the Prime Minister and Cabinet;
- (i) Chief Executive Officer of the Ministry of Natural Resources and Environment;
- (j) the Chief Executive Officer, Ministry of Foreign Affairs and Trade;

- (k) the Chief Executive Officer of the Samoa Tourism Authority;
- (l) the President of the Samoa Chamber of Commerce and Industry;
- (m) the President of the Samoa Association of Manufacturers and Exporters; and the
- (n) the President of the Women in Business Development Incorporated.

(5) A member may nominate a representative from his or her organisation to attend a meeting of the Committee on his or her behalf if he or she 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 must convene a meeting of the Committee at least annually and thereafter as he or she considers necessary.”

8. Functions of the Chief Executive Officer – In section 7(a) of the Principal Act, after “The coordination” insert “establishment, maintenance and review”.

9. Insertion of new section – After section 7 of the Principal Act insert:

“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:

- (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 organizations in relation to areas in paragraph (a) and (b);
- (d) providing advice to overseas bodies and agencies including regional and

- international organizations in relation to areas in paragraph (a) and (b);
- (e) monitoring and enforcing compliance with requirements of this Act;
 - (f) coordinating or carrying out investigation relating to a foreign investment query or complaint;
 - (g) providing a Secretariat for the Private Sector Support Facility Steering Group and the Trade, Commerce and Industry Development Board;
 - (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) engaging in initiating, facilitating and coordinating foreign investment activities that promote Samoa as an investment location; and
 - (o) any other functions to implement the provisions of this Act.

(2) The functions of the Ministry in relation to foreign investment may be further prescribed by Regulations.”

10. Receipt and approval of applications for foreign investment registration – (1) In section 8(1) of the Principal Act:

(a) for “to be undertaken” substitute “against the Reserved, Restricted and Prohibited Lists, following the process provided in the regulations”;

(b) for paragraph (a)(i) substitute:

“(i)are not included in the Prohibited and Reserved Lists; or”

(3) In section 8(4) of the Principal Act, after “Commissioner for Inland Revenue” insert “, the Chief Executive Officer, the Attorney General or any other Ministry or agency”.

11. Insertion of new section – After section 8 of the Principal Act, insert:

“8A. Confidentiality – Information provided in an application shall be kept confidential and shall be used only for the purposes of this Act.”.

12. Duration of certificates – In section 9 of the Principal Act, for “two years if the Minister is satisfied that by that time the operations of the business have not commenced” substitute “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.”.

13. Register of Foreign Investment – In section 10 of the Principal Act, after “Chief Executive Officer” insert “in accordance with regulations”.

14. Reports by Foreign Investors – For section 11 of the Principal Act, substitute:

“11. Reports by Foreign Investors – It shall be a condition of every 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) the number of foreign investment application received;
- (b) the country of origin of applicants;
- (c) the business or economic activity sectors for which applications were received, applications approved and certificates granted, and applications denied and reasons for denial of these applications;
- (d) the sizes and types of investment;
- (e) employment, import and export values, foreign exchange projections, effects and outcome; and
- (f) detailed information and an analysis of the performance of business or economic activities or investment approved under this Act and foreign investments which are exempt from approval and certification under this Act, with a particular emphasis upon the effect of foreign investment on the economic development of Samoa.

(3) The Minister shall provide Cabinet with a copy of the Investment Report and shall make the Investment Report available for public inspection through the Chief Executive Officer.

(4) The Minister may publish and distribute copies of the Annual Foreign Investment Report through the Chief Executive Officer.”.

15. Cancellation of certificates – (1) In section 12 of the Principal Act, after the section title “Cancellation of certificates -” insert “-(1)”.

(2) In section 12(b) of the Principal Act, for “Restricted” substitute “Reserved”

(3) After section 12(d) of the Principal Act insert:

- “(e) The business has not commenced operation within two 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 28 days from the date of receipt of the notice.

(3) After 28 days from the date of receipt of the notice, the Chief Executive Officer shall review all relevant information received, and make a decision whether to cancel or confirm validity of the certificate.

(4) The Chief Executive Officer, within 7 days of making a decision shall 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.

(5) A decision 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, 28 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.

(6) The Ministry shall publish in the Savali or any other local newspaper a list of the certificates cancelled pursuant to this section at the end of every 12 months.”

16. Regulations – In section 18(2)(h) of the Principal Act, for “must be made.” substitute “must be made;

(i) the service of notices made pursuant to this Act.”.

17. Insertion of new section – After section 18 of the Principal Act insert:

“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 shall have the following powers:

- (a) to require a holder of a certificate, or his or her agent to provide answers, whether in writing or orally to questions on any matter relevant to the provisions of the 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 relevant to the provisions of the Act and regulations, whether such document or record is in written, printed, electronic or any other form, which is in the possession or control of the holder of a certificate ;
- (c) 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 the Act and regulations, whether such document or record is in written, printed, electronic or any other form ;
- (d) 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) 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.”

18. Schedules – (1) The Principal Act is amended by substituting the Schedule and replacing with the following:
(section 3(1))

RESERVED LIST

Item number	Activity	Description	Related activities excluded
1.	Bus transport services for the general public	Urban, suburban and rural regularly scheduled multi-stop passenger transportation on land. Services generally rendered on a licence basis within the confines of a single area or group of contiguous villages. These services are provided over predetermined routes and may provide pick-up and discharge passengers at any stop, and are open to any user	Bus services for private schools, hotels and tours, airport shuttles and buses for private businesses for transporting shift workers. These services are provided over predetermined routes and restricted category of user
2.	Taxi transport services for the general public	Motorized taxi-cab services, including urban, suburban and rural. These services are generally rendered on a distance-travelled basis, for a limited duration of time, and to a specific destination	Animal-drawn and man-drawn taxi services
3.	Vehicles for hire, including rentals	Renting, hiring or leasing services concerning private motor cars without operator, principally designed for the transport of persons	Renting or hiring services of private cars with operator
4.	Retailing of groceries including food, beverages and tobacco below the prevailing VAGST threshold under the Value Added Goods	<ul style="list-style-type: none"> ▪ Retail sale of fruit and vegetable including the retailing services of fresh, dried, frozen or canned fruits, nuts and vegetables ▪ Retail sale of dairy products and eggs including the retailing 	

	and Services Tax Act 1992/1993	<p>services of dairy products and eggs</p> <ul style="list-style-type: none"> ▪ Retail sale of meat including poultry and meat products; including retailing services of meat, poultry and game, and meat products ▪ Retail sale of fish and other seafood including retailing services of fresh, prepared and preserved fish, and other seafood ▪ Retail sale of bread and flour confectionary including retailing services of bread and other bakery products ▪ Retail sale of sugar confectionary including retailing services of sugar confectionary like. fruit or nuts preserved by sugar ▪ Retail sale of beverages not consumed on the spot including retailing services of non-alcoholic or alcoholic beverages ▪ Retail sale of tobacco products including retailing services of tobacco products ▪ Specialized retail sale of food products including retailing services of food products like rice, edible oils and fats, salt, coffee, tea, sugar, cocoa and spices, noodles and similar farinaceous products 	<p>Retailing services of beverages consumed on the spot or premises</p>
--	--------------------------------	---	---

<u>5.</u>	Saw milling		
6.	Traditional elei garment designing and printing		

SCHEDULE 2

(Section 4(1))

RESTRICTED LIST

The direct or indirect carrying on of any aspect of business or activity in an economic sector specified in column 2 or economic sub-sector specified in column 3 of this Schedule is subject to the conditions specified in column 4 of this Schedule.

Item number	Sector	Sub-sector	Conditions
1.	Fishing	Commercial fishing vessels	<p>A foreign investor must have a maximum 40% equity</p> <p>Licence issued for commercial fishing vessels is limited in different categories listed by the Ministry responsible for fisheries, except for Category A with no limit.</p>

2.	Manufacturing	Nonu	A foreign investor must establish a joint venture with a local partner and have a maximum 40% equity
		Coconut virgin oil	A foreign investor must establish a joint venture with a local partner and have a maximum 40% equity
3.	Services	<p>(i) Beauty Salon (ii) Mechanical engineering (iii) Customs broker (iv) Real estate (v) Fumigation and pest control (vi) Shipping (vii) Advertising and marketing (ix) Management and consultancy (x) Distribution</p> <p>(xi) Architectural</p> <p>(xii) Professional engineering</p>	<p>for the service sub-sector activities (i) to (xv), activities may only be established through incorporation in Samoa and with a maximum foreign equity capital of 40%; and employment of foreign natural and juridical persons are permitted at management level only.</p> <p>for service sub-sector activity (xi), a foreign investor providing an architectural service must establish a joint venture with a local partner</p> <p>for service sub-sector activity (xii), a foreign investor providing an engineering service must be</p>

		<p>(xiii) General construction (xiv) Civil engineering</p> <p>(xv) Carpentry and joinery (xvi) Retailing</p> <p>(xvii) Sewage (xviii) Refuse disposal (xix) Sanitation</p>	<p>incorporated in Samoa</p> <p>for service sub-sector activity (xiv), the activity may only be established through incorporation in Samoa, and limited to projects valued above \$500,000</p> <p>for service sub-sector activity (xvi), a foreign investor carrying on a retailing business of goods other than food and groceries or operating above the prevailing VAGST threshold under the Value Added Goods and Services Tax Act 1992/1993 must have at least \$250,000 in fixed assets.</p> <p>for service sub-sector activities (xvii) to (xix), the activities may only be established through incorporation in Samoa and with a maximum foreign equity capital of 40%, and employment of foreign natural and juridical persons</p>
--	--	--	--

			are permitted at management level only; and a foreign investor providing a sewage service, refuse disposal service or a sanitation or similar service must establish a joint venture with a local partner
--	--	--	---