

FOREIGN INVESTMENT REGULATIONS 2011

SAMOA

Arrangement of Provisions

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PURSUANT to section 15 of the Agriculture, Forests, and Fisheries Ordinance 1959, I, **TUI ATUA TUPUA TAMASESE**, Head of State, acting on the advice of Cabinet, **MAKE** the following regulations:

DATED this day of.....2011

.....
(Tui Atua Tupua Tamasese)
HEAD OF STATE

REGULATIONS

1. Short title and commencement-(1) These regulations may be cited as the Foreign Investment Regulations 2011.

(2) These regulations commence in whole or in part, upon such day or days nominated by the Minister.

2. Interpretation – In these regulations, unless the context otherwise requires –

“**Act**” means the Foreign Investment Act 2000;

“**applicant**” means an applicant for an application for foreign investment registration under section 8 of the Act;

“application” means an application for foreign investment registration under section 8 of the Act and.

3. Restricted List – (1) The business or economic activities listed in Schedule 2 to the Act may be undertaken by non-citizens only if the Chief Executive Officer determines that the following conditions are met:

- (a) the level of foreign equity in the business or economic activity by a non-citizen is no greater than the level determined by the Minister following consultation with the Chief Executive Officer;
- (b) the amount of investment by a non-citizen in the business or economic activity is no greater than the amount determined by the Minister following consultation with the Chief Executive Officer;
- (c) the business or economic activity contributes to the employment and training of local citizens;
- (d) 50% of the amount of investment capital required for the business or economic activity is sourced from outside Samoa.

(2) The Minister may determine further conditions further to those specified under sub regulation (1) and the determination must be provided to Cabinet within 14 days of making the determination.

4. Criteria and procedures for removing or adding to the Reserved and Restricted Lists – (1) The criteria for removing or adding an activity to the Reserved and Restricted Lists are set out in Schedule 1.

(2) A person may make a written submission to the CEO for the removal or addition of an economic activity to the Reserved or Restricted Lists.

(3) A written submission made under sub regulation (2) must consist of all relevant information, comprehensive data and all other supporting documents in their original form.

(4) The CEO may reject any information or documentation provided under sub regulation (3) or exclude such information or documentation from its assessment of the written submission if the CEO is not satisfied that such information or documentation is not what it purports to be.

(5) After receiving a written submission under sub regulation (2), the CEO shall write to the person who made the written submission to –

- (a) acknowledge receipt of the submission; and

- (b) advise of the submission's preliminary assessment; and
- (c) request further supporting information, if required; and
- (d) notify the person of how the Ministry will proceed further with its consideration of the submission.

(6) In reviewing a written submission, the CEO must be satisfied that the person who made the written submission satisfies at least two of the criteria set out in Schedule 1 either for adding or removing an economic activity, whichever one applies.

(7) Depending on the complexities of the issues raised in a written submission and where applicable the need for a further study to ascertain a claim in the written submission, the CEO must review a written submission within 12 months from the date the written submission was received.

(8) After a review by the CEO under sub regulation (7), the CEO must prepare and submit a report of the review of the written submission to the Foreign Investment Advisory Committee, which shall make a decision on the written submission.

(9) The Minister shall submit the Foreign Investment Advisory Committee's decision to Cabinet for its approval and Cabinet may consult the Attorney General if it wants additional alterations.

(10) The CEO shall inform the person who made the written submission of the decision on his or her written submission as soon as possible after Cabinet approves the decision.

(11) The Ministry is not responsible for any fees or costs associated with the preparation of a written submission by a person, except if it is required to commission a further study into issues raised in the written submission.

5. Application for foreign investment registration –

(1) An application made under section 8 of the Act shall be in a form approved by the Chief Executive Officer and shall include the following:

- (a) the enterprise or business name;
- (b) the form of ownership, whether it is a company, partnership, or sole proprietor;
- (c) the business trading name;
- (d) personal information on shareholders including a brief background about the shareholders;
- (e) the shareholder's contact details including:
 - (i) overseas residence address; and

- (ii) address in Samoa;
- (f) the enterprise registration number and date of approval issued by the Registrar of Companies;
- (g) the exact location of the proposed place of business or activity and details;
- (h) submission by each shareholder of the following:
 - (i) one recent passport size photo;
 - (ii) a certified true copy of the photo page of his or her valid passport;
- (i) a certified true copy of the certificate of incorporation;
- (j) confirmation of the source of funds and the total initial working capital for the proposed business or economic activity;
- (k) any other relevant supporting document required by the Chief Executive Officer.

(2) If the Chief Executive Officer considers an application to be incomplete, he or she must, within 5 working days, return the application to the applicant with a notice providing reasons for non-acceptance of the application.

(3) If the Chief Executive Officer considers an application to be complete, he or she must, within 5 working days after receiving the application, issue a receipt to the applicant which includes the date on which the application was registered and a registration number.

(4) The time for the issue of a certificate shall be 5 working days from the date of registration under subsection (3).

6. Foreign investment registration certificate – A certificate issued under section 8 of the Act shall be in a form approved by the Chief Executive Officer and shall include the following:

- (a) the name of the applicant;
- (b) the registration number of the certificate;
- (c) the name and nominated address in Samoa of the certificate holder;
- (d) the business, economic activity or approved investment;
- (e) the details of any prescribed conditions applying to the approval of the certificate;
- (f) the date of the issue of the certificate;
- (g) the signature of the Chief Executive Officer or the Chief Executive Officer's delegate.

7. Foreign investment register – (1) The register required to be kept under section 10 of the Act of applications made and certificates granted may be in written or electronic form, or both, as approved by the Chief Executive Officer.

(2) The Ministry shall keep the register open for public inspection during normal business hours upon payment of the fee specified in Schedule 2.

(3) The Ministry shall record in the register the information specified in regulation 6 except the signature of the Chief Executive Officer.

(4) If a certificate lapses pursuant to section 9 of the Act or is cancelled pursuant to section 12 of the Act, the Chief Executive Officer must remove the business from the register and accord details of the lapse or cancellation in summary form.

8. Amendment to certificates and entries in the register – (1) Where a holder of a certificate granted under the Act changes his or her circumstances in which the original certificate was granted or is aware of a mistake in the certificate, the holder must notify the Chief Executive Officer by notice in writing of the change or mistake as soon as possible.

(2) If the Chief Executive Officer receives a notice pursuant to sub-regulation 1, the Chief Executive Officer may:

(a) amend the Register; or

(b) issue an amended certificate to the holder after payment by the holder of the fee specified in Schedule 2.

(3) If the Chief Executive Officer amends the register, the Chief Executive Officer shall provide a notice in writing specifying the amendment to the holder affected by the amendment.

9. Service of notices – (1) Any notice or document required to be served on or given to the Minister or the Chief Executive Officer may be deposited at the office of the Chief Executive Officer during normal business hours.

(2) Any notice or document required or authorized to be served on or given to an applicant or a certificate holder or any business registered under the Act or regulations may be deposited at the nominated address in Samoa of the applicant or certificate holder or the business, as the case may be, during normal business hours.

(3) A document signed by an applicant, certificate holder or a representative of any business registered under the Act or their agency, indicating the place and time of service, shall be sufficient to prove service of a notice or document.

10. Fees – The fees payable under the Act and these regulations are provided in Schedule 2.

SCHEDULE 1
CRITERIA FOR ‘REMOVING OR ADDING’ AN
ECONOMIC ACTIVITY TO THE RESTRICTED
LIST OR RESERVED LIST

(Regulation 4(1))

Criteria for adding new activities to the list	Benchmark	Criteria for removing activities from the list	Benchmark
1. The economic activity is sufficiently taken care of by domestic investors and that additional entries would render unprofitable returns to existing operators;	At least 50% of existing businesses carrying out the same economic activity are locals	1. The economic activity is insufficiently taken care of by domestic investors and that additional entries would improve the supply of service; and creation of employment	<ul style="list-style-type: none"> ▪ At least 100 new jobs opportunities would be created ▪ Evidence of high level of skills and technology transfer that would result from the additional businesses
2. Availability and sufficiency of local capital investment to establish large scale commercial activities	All businesses involved provides certified evidence of existing funds of at least \$1,000,000 tala or equivalent.	2. Unavailability and insufficiency of local capital to establish large scale commercial activities	Certified evidence of existing capital and funds to be injected into the economy from overseas to a minimum of \$2,000,000.00 tala or equivalent.
3. Local business operators can meet national development strategies objectives and less dependant on Government assistances	Evidence of improved contributions to employment creation at a consistent rate of 2% growth on a five years basis or; Evidence of planned activities especially for capacity building for employees; as well	3. Local business operators cannot meet national development strategies objectives and are always reliant on Government support.	No evidence of any additional employment opportunities over a five years basis; no concrete budgets intended for expansionary and other related developments to improve operation. Less contribution to value adding efforts; including

	as that relating to increased allocated budgets for research and development.		inconsistent tax contributions
4. When there is sufficient local suppliers of a particular activity/service and a healthy competition exist	At least 50% of existing businesses are carrying out the same economic activity in a competitive manner. No complaints of any unfair practices.	4. When a local operator is monopolizing the market discouraging competition	Evidence that additional investor would be supplying the same product or services as provided in an approved Foreign investment certificate and a valid business license. Confirmation of business license

SCHEDULE 2
TABLE OF FEES

(Regulations 7(2), 8(2)(b), and 10)

Item	Legislative provision	Matter for which fee is payable	Amount
1.	Section 18(2)(c) of the Act	For lodgment of an application for a Foreign Investment Registration Certificate	SAT\$20.00
2.	Section 18(2)(c) of the Act	For issuing a Foreign Investment Registration Certificate	Free of charge
3.	Regulation 7(2)	For Inspection of a Foreign Investment Register	SAT\$50.00
4.	Regulation 8(2)(b)	For Issuing an amended Foreign Investment Registration Certificate	SAT\$50.00
