

FOREIGN INVESTMENT AMENDMENT BILL 2011

SAMOA

Arrangement of Provisions

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|---|------------------------------------|
| 1. Short title and commencement | 10. Insertion of new section 8A |
| 2. Interpretation | 11. Duration of certificates |
| 3. Reserved List | 12. Register of Foreign Investment |
| 4. Restricted List | 13. Reports by Foreign Investors |
| 5. Activities not otherwise restricted | 14. Insertion of new section 11A |
| 6. Insertion of new section 6A | 15. Cancellation of certificates |
| 7. Functions of the Chief Executive Officer | 16. Offences and Penalties |
| 8. Insertion of new section 7A | 17. Regulations |
| 9. Receipt and approval of applications for foreign investment registration | 18. Insertion of new section 19 |
| | 19. Schedules |

2011 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 2011 and shall be read together with and form part of the Foreign Investment Act 2000 (“Principal Act”).

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

2. Interpretation – (1) In section 2(1) of the Principal Act:

(a) insert the following in correct alphabetical order:

“**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”; and

(b) in the interpretation of “Reserved List” for “the Schedule” substitute “Schedule 1”.

(2) 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.”.

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

(2) After section 3(1) of the Principal Act, insert:

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

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

“(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 – 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 a citizen”; and

(b) after subsection (1) insert:

- “(1A) The business or economic activities listed in Schedule 2 are clarified under the CPC Code where applicable.”; and
- (c) in subsection (2), after “business venture” insert “or economic activity”; and
- (d) after subsection (3), insert:
 “(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 – In section 5 of the Principal Act:

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

6. Insertion of new section 6A – 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) review the Reserved and Restricted Lists in accordance with the criteria and procedures set out in regulations; and
- (b) review the criteria and procedures referred to under paragraph (a);
- (c) provide advice to the Minister regarding paragraphs (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 shall be comprised of the following:

- (a) the Chief Executive Officer, who is also the Chairperson;
- (b) the Chief Executive Officer of the Ministry responsible for 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 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;
- (m) the President of the Samoa Association of Manufacturers and Exporters Inc.

(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 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 section 7(a) of the Principal Act, for “coordination” substitute “coordination, establishment, maintenance and review”.

8. Insertion of new section 7A – 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 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 paragraph (a) and (b);
- (d) providing advice to overseas bodies and agencies including regional and international organisations in relation to areas in paragraph (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.”.

9. 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 relevant process prescribed by regulations”; and

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

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

(2) In section 8(4) of the Principal Act, for “Commissioner for Inland Revenue” substitute “Commissioner for Inland Revenue, the Chief Executive Officer, the Attorney General or any other Ministry or agency which the Minister deems necessary”.

(3) After section 8(5) of the Principal Act insert “(6) A certificate issued under this section is non transferable”.

10. Insertion of new section 8A – 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.”.

11. 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”.

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

accordance with the process to be prescribed by regulations”.

13. 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.”.

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

“**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.”.

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, after “Prohibited List” insert “, Reserved List”.

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

“(e) The business has not commenced operation 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 pursuant to this section at the end of every financial year.”.

16. Offences and Penalties – For section 14(1) of the Principal Act, substitute the following:

“(1) Subject to this Act, it shall be 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.”.

17. Regulations – (1) In section 18(2)(a) of the Principal Act, for “Schedule” substitute “Schedules”.

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

(3) After section 18(2)(h) of the Principal Act, insert
“(i) The service of notices made pursuant to this Act.”.

18. Insertion of new section 19 – 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 written or oral answers 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 which is in the holder of the certificate’s possession and is relevant to the provisions of the 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 the 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 subsections (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 subsections (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 his or her or their 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 is guilty of 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 one (1) year, or both.”.

19. Schedules – For the Schedule to the Principal Act, substitute the following:

**“SCHEDULE 1
RESERVED LIST**

(Section 3(1))

Activity	Description	Related activities excluded
Bus transport services for the general public	Urban, suburban and rural regularly scheduled multi-stop passenger transportation on land. Services classified here are motor-bus, and similar services generally rendered on a license basis within the confines of a single area or group of contiguous villages. These services are provided over predetermined routes on a predetermined time schedule, may provide pick-up and discharge of passengers at any scheduled stop, and are open to any user.	Bus services for private schools, hotels & tours airport shuttles and buses for private businesses for transporting shift workers. These services are provided over predetermined routes, time schedule and restricted category of user.
Taxi transport services for the general public	Motorized taxi-cab services, including urban, suburban and interurban. These services are generally rendered on a distance travelled basis, for a limited duration of time, and to a specific destination.	
Rental vehicles	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 such as rental services of passenger cars

		with operator.
Retailing	<p><u>Retail sales of fruit and vegetables</u> - Retailing services of fresh, dried, frozen or canned fruits, nuts and vegetables.</p> <p><u>Retail sales of dairy products and eggs</u> - Retailing services of dairy products and eggs.</p> <p><u>Retail sales of meat (incl. poultry) and meat products</u> - Retailing services of meat, poultry and game, and meat products.</p> <p><u>Retail sales of fish and other seafoods</u> - Retailing services of fresh, prepared and preserved fish, and other seafoods.</p> <p><u>Retail sales of bread and flour confectionery</u> - Retailing services of bread and other bakery products.</p> <p><u>Retail sales of sugar confectionery</u> - Retailing services of sugar confectionery, e.g. fruit or nuts preserved by sugar.</p> <p><u>Retail sales of beverages not consumed on the spot</u> - Retailing services of non-alcoholic or alcoholic beverages.</p> <p><u>Retail sales of tobacco products</u> - Retailing services of tobacco products.</p> <p><u>Specialized retail sales of food products n.e.c.</u> - Retailing services of food products, not elsewhere classified, e.g./rice, edible oils and fats, salt, coffee, tea, sugar, cocoa and spices, noodles and similar farinaceous products.</p>	<p>Retailing services of beverages for consumption on the premises</p>

Saw milling	Facility where logs are cut into timber.	
Traditional elei garment designing and printing printing	Garment printing and designing using carved board (Upeti).	

SCHEDULE 2
RESTRICTED LIST

(Section 4(1))

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.

Economic Sector	Economic Sub-sector	Conditions
Fishing	Commercial fishing vessels – vessels categories A ($\leq 11\text{m}$ in length), B ($11\text{m} \leq 12.5\text{m}$ in length), C ($12.5\text{m} \leq 15\text{m}$ in length), D ($15\text{m} \leq 20.5\text{m}$ in length) & E ($\geq 20.5\text{m}$ in length) categorized by the Ministry responsible.	A foreign investor must have a maximum 40% equity. A license issued for commercial fishing vessels is limited in different categories listed by the Ministry responsible for fisheries, except for Category A with no limit.
Manufacturing	Nonu (known scientifically as <i>Morinda citrifolia</i> , is a tropical fruit processed as juice for many folk remedy uses).	A foreign investor must establish a joint venture with a local partner.
	Coconut Virgin Oil (oil from the coconut that is in its unrefined and natural form (without fragrance and other added preservatives etc).	A foreign investor must establish a joint venture with a local partner.
Services	Architectural	A foreign investor providing an architectural service must establish a joint venture with a local partner.
	Professional engineering	A foreign investor providing an engineering service must be incorporated in Samoa.
	General construction	Only through incorporation in Samoa.

	Sewage	A foreign investor providing a sewage service must establish a joint venture with a local partner.
	Refuse disposal	A foreign investor providing a refuse disposal service must establish a joint venture with a local partner.
	Sanitation and similar services	A foreign investor providing a sanitation and similar service must establish a joint venture with a local partner.
