

ANNEX 2

FOREIGN INVESTMENT ACT 2002

FOREIGN INVESTMENT REGULATIONS 2002

In exercise of the powers conferred by section 18 of the Foreign Investment Act 2002, the Minister with the consent of Cabinet hereby makes the following regulations -

1. **Short title**

- (1) These regulations may be cited as the Foreign Investment Regulations 2002.
- (2) These regulations shall come into force on a day nominated by the Minister.

2. **Interpretation**

- (1) In these regulations, unless the context otherwise requires –
"Act" means the Foreign Investment Act 2002.
"Application" means an application for a Foreign Investment Registration Certificate made under section 7 of the Act and "applicant" shall have a corresponding meaning.
- (2) Unless the context otherwise requires, words or expression in these regulations have the same meaning as in the Act.

3. **Reserved List**

For section 4(1) of the Act, the Reserved List is set out in Schedule 1 and prescribes the business activities which only Tongan investors may carry on.

4. **Restricted List**

For section 4(2) of the Act, the Restricted List is set out in Schedule 2 and prescribes the business activities which a foreign investment business may carry on if the corresponding conditions set out in that Schedule are satisfied.

5. **Prohibited List**

The List of prohibited activities as specified in the Business Licences Act 2002 is set out in Schedule 3.

6. **Amendment of Reserved and Restricted Lists**

- (1) The Reserved List and the Restricted List may be amended in accordance with this regulation.
- (2) The Secretary shall review the Reserved List and Restricted List every 2 years and make the relevant recommendation to the Minister in respect of any proposed additions, variations or deletions to the Lists [proposed amendments].
- (3) The Minister shall within 28 working days of receiving the Secretary's recommendation call and hold a consultative meeting with the Government/Private Sector Consultative Committee to discuss the proposed amendments.
- (4) The Minister may within 21 working days of the consultative meeting amend the Reserved List and /or Restricted List after considering the recommendations of the Government/Private Sector Consultative Committee.
- (5) The amended Reserved and/or Restricted List shall be published in the Gazette

- (6) Any amendments made to the Reserved List and/or the Restricted List shall not apply retrospectively.

7. **Application for Foreign Investment Registration Certificate**

- (1) An application made under section 7 of the Act shall be in a form approved by the Secretary and shall include a nominated address in Tonga for the applicant.
- (2) An application must be given to the Secretary at the Secretary's office either personally or by post.
- (3) Where an application is considered by the Secretary to be incomplete, the Secretary shall advise the applicant in writing to provide the necessary information and/or supporting documents required to complete the application.
- (4) Where an application is considered by the Secretary to be complete, the applicant srySecretary

- (1) An application to transfer a certificate under section 13 of the Act must be made by the certificate holder in writing to the Secretary and accompanied by an application by the proposed transferee in the form prescribed under regulation 7(1).
- (2) The provisions of section 8 of the Act apply to the application to transfer a certificate.
- (3) The provisions of regulation 7 shall apply to an application to transfer a certificate as if the application was made under s 7 of the Act.

12. **Cancellation of Certificate**

- (1) Where the Secretary proposes to cancel a certificate pursuant to s 11 of the Act, the Secretary shall:
 - (a) Advise the holder of the certificate by notice in writing of the reason(s) for the proposed cancellation; and
 - (b) The notice shall inform the holder of the certificate that the holder has an opportunity to make a written submission to the Secretary within 14 working days of the notice date and that any submission so made will be taken into account by the Secretary before any decision is made.
- (2) After 14 working days from the notice date referred to in subregulation (1) the Secretary shall review all relevant information, including any written submission made by the holder of the certificate, and may cancel the certificate in accordance with s 11 of the Act.
- (3) The Secretary shall within 7 working days of making a decision under s 11 advise the holder of the certificate in writing:
 - (a) Of the Secretary's decision; and
 - (b) If the decision is to cancel the certificate:
 - I. The reason(s) for the decision; and
 - II. The certificate holder's right of appeal under s 14(3) of the Act.

13. **Appeal to Minister**

- (1) An appeal made pursuant to section 14(1) of the Act must be made in writing to the Minister within 14 working days of the date of the notice advising the applicant of the Secretary's refusal of a certificate under section 8(3), setting out concisely the grounds of appeal.
- (2) The Minister shall within 7 working days of receiving the appeal nominate and appoint an Arbitrator to determine the appeal.
- (3) The Arbitrator shall within 28 working days of being appointed determine the appeal and provide the Minister with a written decision of the appeal.
- (4) The Minister shall within 7 working days of receiving the Arbitrator's written decision advise the applicant in writing of the outcome of the appeal as determined by the Arbitrator.

14. **Appeal to Supreme Court**

- (1) Where a holder of a certificate has a right to appeal to the Supreme Court pursuant to s 14(3), the holder must within 28 working days of the date of the cancellation notice appeal to the Supreme Court.

15. **Effectiveness of Cancellation**

Where the Secretary cancels a certificate in accordance with s 11 of the Act, the cancellations shall not come into effect until:

- (1) In the case of a holder of a certificate who does not exercise a right of appeal within the time prescribed under regulation 12, the date the 28 working day right of appeal expires.
- (2) In the case of a holder of a certificate who exercises a right of appeal within the time prescribed under regulation 12, the date a judgment is released on the appeal if in favour of the cancellation.

16. **Amendment of Register and Certificate**

- (1) Where the holder of a certificate becomes aware that the information contained on the certificate and/or the foreign investment register is no longer correct due to a change in circumstances, the holder of the certificate must within 30 working days advise the Secretary of the change(s) by notice in writing.
- (2) Where the Secretary receives a notice under subregulation (1) and the Secretary is satisfied that the foreign investment register contains information that is no longer correct, the Secretary shall amend the register within 7 working days of receiving the notice.
- (3) Where the Secretary receives a notice under subregulation (1) and the Secretary is satisfied that the certificate issued under section 8 of the Act contains information that is no longer correct, the Secretary shall issue the holder of a certificate with an amended certificate upon application and payment of the prescribed fee as set out in Schedule 4.
- (4) Where the Secretary amends the foreign investment register, the Secretary shall within 7 working days of the amendment provide notice in writing of the amendment to the holder of the certificate affected by the amendment.

17. **Fees**

The fees table at Schedule 4 shall apply under the provisions of the Foreign Investment Act 2002 and the Regulations.

Signed at Nuku'alofa on [.....] day of [.....] [2005]

Hon. Cecil Cocker
Minister of Labour, Commerce & Industries

**SCHEDULE 1
(Regulation 3)**

RESERVED LIST

1. Taxis
2. Passenger vehicles for hire
3. Used motor vehicle dealers
4. Retailing activity which consist of the distribution of grocery products (food & household provisions) for final consumption
5. Baking of white loaf bread
6. Tongan cultural activities, including:
 - i. folktales, folk poetry, and folk riddles;
 - ii. folk songs and instrumental folk music;
 - iii. folk dances, and folk plays;
 - iv. production of folk arts in particular, drawings, paintings, carvings, sculptures, woodwork, jewellery, handicrafts, costumes, and indigenous textile
7. Raising of chicken for the production of eggs
8. Security business
9. Export of green and mature coconuts
10. Wiring and installation of residential and commercial buildings with capital investment of less than \$500,000
11. Production / Farming of:
 - (a) root crops (yams, sweet yam, taro, sweet potato, cassava);
 - (b) squash;
 - (c) paper mulberry [hiapo];
 - (d) pandanus [lou'akau]; and
 - (e) kava
12. Fishing activities comprising:
 - (a) Reef fishing
 - (b) Inshore fishing within 12 nm (Zone C) in water less than 1000 meters
 - (c) Bottom fishing in water depth less than 500 m

**SCHEDULE 2
(Regulation 4)**

RESTRICTED LIST

No.	Business activity	Condition
1.	Commercial fishing comprising: Tuna fishing Bottom fishing in water deeper than 500m Other deep water fishing Aquaculture	Subject to their respective Resource Management Plan (administered by the Ministry of Fisheries)
2.	Agricultural supply store distributing seeds, fertilizers, chemicals.	Subject to the requirements of the Pesticide Act 1993
3.	Education facility	Education Act
4.	Medical or Health activity	Public Health Act 1992

**SCHEDULE 3
(Regulation 5)**

PROHIBITED LIST

1. Storage, disposal or transport of nuclear or toxic waste
2. Pornography
3. Export, import or production of any products that are prohibited under the Laws of Tonga
4. Prostitution
5. Processing or export of endangered species
6. Production of weapons of warfare

**SCHEDULE 4
(Regulation 12)**

FEES

Item	Activity	When payable	Fee \$
1.	Application for a certificate under section 7 of the Act	When application is made	\$100
2	Application to amend a certificate.	When application is made	\$15
3	Application to transfer a certificate under section 12 of the Act	When application is made	\$45
4	Inspection of Foreign Investment Register	Prior to inspection	\$10
5	Copying of Foreign Investment Register	Upon application for copy	\$10