

Foreign Investment Bill

- | Section | |
|----------------|--|
| | 1. Short title and commencement |
| | 2. Interpretation |
| | 3. Investment by foreign investment businesses |
| | 4. Reserved and Restricted lists |
| | 5. Foreign investment registration certificate |
| | 6. Secretary's function |
| | 7. Application for certificate |
| | 8. Issue or refusal of certificate |
| | 9. Referral to Minister |
| | 10. Duration of business |
| | 11. Cancellation of certificate |
| | 12. Transfer of certificate |
| | 13. Appeals |
| | 14. Offences and penalties |
| | 15. Investment guarantees |
| | 16. Transitional arrangements |
| | 17. Regulations. |

A BILL

for

AN ACT RELATING TO FOREIGN INVESTMENT

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

- Short title and commencement**
1. (1) This Act may be cited as the Foreign Investment Act 2002.
- (2) This Act shall come into force on a day proclaimed by His Majesty in Council
- Interpretation.**
2. In this Act, unless the context otherwise requires -
- "certificate"** means a foreign investment registration certificate issued by the Secretary under section 8;
- "Convention on Settlement of Investment Disputes"** means the Convention signed in Washington DC, United States of America on 3rd February 1978 and ratified by the Kingdom of Tonga on 21st March 1990.
- "foreign citizen"** means an individual person who is not a Tongan subject;
- "foreign investment business"** means a foreign investor which carries on any activity for the purpose of generating revenue in trade, commerce or industry, and includes any trade, profession or calling;
- "foreign investment register"** means the register of certificates established and maintained by the Secretary under section 6;
- "foreign investor"** means -
- (a) in the case of an individual - a person who is not a Tongan subject;
- (b) in the case of a partnership or unincorporated joint venture - a partnership or unincorporated joint

venture where foreign investment business controls

a Tongan subject; and

- (b) in any other case - a person which is incorporated or constituted under the Laws of Tonga and which is not a foreign investor;

"Tongan subject" means a person who is a Tongan subject by birth or naturalization.

**Investment
by foreign investment
businesses**

- 3. (1) Subject to this Act, and any other Laws of Tonga, a foreign investment business may carry on any business activity in the Kingdom that is not -
 - (a) a reserved activity; or
 - (b) a prohibited activity.

(a) a foreign investment business may carry on a business activity only by entering into a joint venture with a Tongan investor;

(b)

certificate

made in the prescribed form to the Secretary.

(2) Subject to section 8, the Regulations may prescribe the procedure for an application for a certificate, its determination and the issue of a certificate.

Issue or refusal of certificate

8. (1) The Secretary must consider every application made under section 7 and within 7 calendar days, or such other time prescribed in the Regulations shall -

- (a) issue a certificate if the application is for a business activity that -
 - (i) is not a prohibited activity;
 - (ii) is not a reserved activity;
 - (iii) is not a restricted activity; or
 - (iv) is a restricted activity and which meets the conditions applicable to the business activity; or
- (b) inform the applicant in writing that the application has been refused on the grounds that it is for a business activity which is -
 - (i) a prohibited activity;
 - (ii) a reserved activity; or
 - (iii) a restricted activity and the business activity fails to comply with the prescribed conditions.

(2) A certificate issued under section 8(1)(a)(iv) must be endorsed with a list of the prescribed conditions.

(3) The Secretary may delegate, by written notice, any or all of the Secretary's powers under this Act to one or more officers in the Ministry.

Referral to

9. If the Secretary, when considering an application under

(2) An application under subsection (1) must be made and determined in accordance with the method prescribed in the Regulations.

(3) The Secretary must not approve an application to transfer a certificate unless th

(3)

Regulations

- 17.** (1) The Minister may make regulations as are required under this Act or are necessary or expedient for giving full effect to the provisions of this Act and for its proper and efficient administration.
- (2) Without limiting the power in subsection (1), regulations may be made under this subsection for the following purposes -
- (a) the inclusion, deletion, amendment or clarification of any business activity in the Reserved List;
 - (b) the inclusion, deletion, amendment or clarification of any business activity in the Restricted List and the conditions under subsection 4(3);
 - (c) the fees to be paid in relation to an application to issue or amend a certificate;
 - (d) the form of the foreign investment register;
 - (e) fees for the inspection, and making copies, of the foreign investment register;
 - (f) the form of reports to be submitted by foreign investment businesses; and
 - (g) the procedures for applying for amendment of certificates and entries in the foreign investment register and the circumstances in which such applications may or must be made.

Passed in the Legislative Assembly this _____ day of _____ 2002.