

G003o20 0 15.57147143stment Bill

- (c) in the case of company -
 - (i) a company incorporated in a country outside Tonga; or
 - (ii) a company incorporated in Tonga where foreign investment business controls more than 25% of the company's voting shares.
- (d)

"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.
- (2) A foreign citizen may be employed by a person carrying on a reserved activity if the foreign citizen is entitled to carry on that employment in the Kingdom under the Immigration Act and any other Laws of Tonga.
- (3) A foreign investment business may carry on a restricted activity if the foreign investment business satisfies the conditions prescribed in the Regulations.

**Reserved and
restricted lists**

4. (1) The Minister must establish and maintain a Reserved List setting out the business activities which are reserved only for Tongan investors to carry on.
- (2) The Minister must establish and maintain a Restricted List setting out the business activities which a foreign investment business may carry on only if the foreign investment business satisfies the conditions prescribed in the Regulations.
- (3) The Minister may prescribe in the Regulations, after consulting with the Secretary, any or all of the following conditions which may apply generally or to a particular business activity -
- (a) a foreign investment business may carry on a business activity only by entering into a joint venture with a Tongan investor;
 - (b) the minimum or maximum amount that must be invested by a foreign investment business;
 - (c) the target number of employees of a foreign investment business who are Tongan subjects; and
 - (d) the amount, if any, of investment capital of a foreign investment business to be sourced from outside Tonga.

Foreign investment registration certificate **5.** (1) Every foreign investment business in Tonga

(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
Minister**

9. If the Secretary, when considering an application under section 8, is unable to determine whether a business activity is -

(a) a prohibited activity;

(b) a reserved activity; or

(c) a restricted activity;

the Secretary must refer the application to the Minister who must determine in writing, and within 7 calendar days of the reference to him, whether the business activity is a prohibited activity, a reserved activity or a restricted activity.

**Duration of
certificate**

10. (1) A certificate is valid from the date of its issue until the termination of the business activity for which it was issued.

(2) A certificate ceases to be valid if the business activity for which it is issued does not commence within 1 year of the date of the certificate's issue.

**Cancellation of
certificate**

- 11.** A certificate may be cancelled by the Secretary if -
- (a) any information given in the application for the certificate was materially incorrect so as to create a false impression of the ownership of the foreign investment business or the nature of its activities;
 - (b) the foreign investment business carries on a prohibited activity or a restricted activity;

Appeals

13.

(4) A foreign investment business which holds a certificate must be accorded treatment under the Laws of Tonga no less favourable than the treatment accorded to a business owned by Tongan investors.

(5) A foreign investment business which holds a certificate may, subject to any Laws of Tonga relating to taxation or exchange control, transfer capital and income of its business to outside Tonga.

Transitional arrangements

- 16.** (1) Every foreign investment business carrying on a business in Tonga on the date that this Act commences must apply to the Secretary for a certificate within 12 months of that date provided always that;
- (a) no such application shall be refused unless the applicant's business activity is a prohibited activity, or a reserved activity;
 - (b) no such application shall be made subject to the prescribed conditions unless the applicant's business activity is a restricted activity.
- (2) The Secretary may approve a written application for an extension of the time period under subsection (1) for a further period not exceeding 12 months.

Regulations

- 17.** (1) The Minister shall 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.

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

1. **RESERVE LIST:** (Sectors or activities not open to foreign investment)

- Taxi
- Passenger vehicle for hire
- Retailing of foodstuff
- Bakery

2. **RESTRICTED LIST:** (Sectors open to