Tonga

# FOREIGN INVESTMENT REGULATIONS 2021

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# FOREIGN INVESTMENT REGULATIONS 2021

## FOREIGN INVESTMENT ACT 2020

*IN EXERCISE of the powers conferred by section 45 of the Foreign Investment Act 2020, the Minister responsible for trade and economic development with the consent of Cabinet makes the following regulations –*

### 1 Short Title and commencement

(1) This Regulation may be cited as the Foreign Investment Regulations 2021.

(2) These Regulations shall come into force on the day it is gazetted.

### 2 Interpretation

In these Regulations, unless the context otherwise requires —

**"Act"** means the Foreign Investment Act 2020;

**"certificate"** means a Foreign Investment Registration Certificate issued under section 15(3)(a) of the Act;

**"operational date"** means the date that on which the certificate is issued;

**"implementation period"** means 12 months from the operational date;

**"register"** means the Foreign Investment Register established under section 30 of the Act;

**"Minister"** has the same meaning as provided for under section 2 of the Act;

**"PACSIC"** means the Pacific Standard Industrial Classification of All Economic Activities published by the Secretariat of the Pacific Community, as amended from time to time.

## 3 Application for a Foreign Investment Registration Certificate

(1) An application for a certificate shall be in the form as approved by the Registrar.

(2) If an application is incomplete, the Registrar may within 5 working days write to the applicant to complete the application.

## 4 Online submissions

(1) Any person may submit documents to the Registrar via the foreign investment online service.

(2) The Registrar may request further documentation or other evidence from a person who intends to use the online service to authenticate the identity of such a person.

## 5 Appointment of an arbitrator

(1) The Minister shall appoint an arbitrator in accordance with this regulation to determine an appeal from the decision of the Registrar under section 15(3)(b) or section 18(3)(b) of the Act.

(2) A person appointed by the Minister to be an arbitrator shall be —

(a) a senior law practitioner with at least 10 years of experience in that level;

(b) a business person with well-known experience within the business sector; or

(c) a person with special knowledge and experience in the fields of trade and economics.

(3) A person appointed as an arbitrator shall guarantee that he has no personal interest in the appeal.

(4) An arbitrator's appointment shall cease when the appeal is concluded.

## 6 Reserved List

The Reserved List is provided in Schedule 1.

## 7 Restricted List

The Restricted List is provided in Schedule 2.

## 8 Extension of implementation period

(1) Upon written application by the holder of a certificate to carry on a restricted activity, the Registrar may extend the implementation period.

(2) An application by the holder of a certificate under sub regulation (1) shall be made at least 30 days before the end of the implementation period.

(3) The Registrar may extend the implementation period for a length of time no longer than 12 months on any one occasion.

(4) Upon receipt of the application, the Registrar shall give the holder a written notice of his decision within 10 working days.

(5) If the Registrar decides to grant an extension of the implementation period, he shall amend the registry accordingly.

## 9 Fees

The fees payable under the Act and these Regulations are provided in Schedule 3.

Made in Nuku'alofa on this **1st** day of **November** 2021.

**Hon. Tatafu Moeaki**

**Minister responsible for Trade and Economic Development**

## SCHEDULE 1

(Regulation 6)

## RESERVED LIST

| | PACSIC | ACTIVITY |
|---|---|---|
| | (PACSIC 4922_01) | Bus transport, excluding those operated by short term accommodation services. |
| | (PACSIC 4922_02; PACSIC 4922_03; PACSIC 4922_04) | Mini vans, cars, and public motor vehicles used as taxis, excluding those operated by short term accommodation services. |
| | (PACSIC 5510_01) | Short term accommodation services in the form of guesthouses and youth hostels. |
| | (PACSIC 4510_01) | Sale of motor vehicles in the form of retail sale of used motor vehicles |
| | (PACSIC 1071_01) | Manufacture of breads, excluding short-term accommodation services providing for guests. |
| | (PACSIC 9000_01) | Creative arts and entertainment activities in the form of traditional Tongan cultural activities. |
| | (PACSIC 4620_01) | Wholesale of agricultural raw materials, in the form of export of green and mature coconuts. |
| **Fishing activities** | | |
| | (PACSIC 0311_09) | fishing for reef or lagoon fish, including coastal pelagic fish |
| | (PACSIC 0311_99) | marine fishing within 12 nautical miles in water of depth less than 1000 metres |
| | (PACSIC 0311_99) | marine fishing, in the form of bottom fishing in water of depth less than 500 metres |
| | (PACSIC 1020_99) | processing and preserving of fish, excluding activities of vessels only |

| | | |
|---|---|---|
| | | engaged in the processing and preserving of fish. |

## SCHEDULE 2

(Regulation 7)

## RESTRICTED LIST

| Item | Activity | Conditions |
|---|---|---|
| 1. | Fishing comprising any of the following-<br>(a) industrial-scale fishing for bigeye, albacore, and yellowfin tuna (and associated pelagic fish) and industrial-scale fishing for skipjack tuna (PACSIC 0311_01; PACSIC 0311_02)<br>(b) marine fishing on a commercial basis, in the form of bottom fishing in water of depth more than 500 metres (PACSIC 0311_99)<br>(c) other deep-water marine fishing on a commercial basis not less than 100 metres. (PACSIC 0311_99) | (a) At least 30% equity held by Tongan national.<br>(b) The foreign investor shall have at least $500,000 in owner's contribution or paid-up capital for companies in the form of cash from the operational date, to be fully brought into Tonga within the implementation period. |
| 2. | Retail sale in non-specialised stores with food, beverages or tobacco predominating.<br>(PACSIC 4711_01) | Foreign investor shall have at least $250,000 in owner's contribution or paid-up capital for companies in form of cash from the operational date, to be fully brought into Tonga within the implementation period. |
| 3. | Any of the following activities:<br>(a) growing of fruit bearing vegetables in the form of squash (PACSIC 0113_02)<br>(b) growing of perennial crops in the form of | (a) At least 30% equity held by Tongan national(s).<br>(b) Foreign investor shall have at least $250,000 in owner's contribution or paid-up capital for companies in the form of cash from the operational date, to be fully brought into Tonga within the implementation period. |

| | | |
|---|---|---|
| | pandanus (PACSIC 0129_99)<br>(c) growing of kava (PACSIC 0128_02)<br>(d) silviculture and other forestry activities relating to paper mulberry (PACSIC 0210_99) and sandalwood (PASCIC 0210_04) | |

## SCHEDULE 3

(Regulation 9)

## PRESCRIBED FEES

| Item | Section of the Act | Activity | Fee ($TOP) | Due |
|---|---|---|---|---|
| 1. | 13 | Application issue of certificate | 500 | On filing |
| 2. | 16 | Application to transfer of certificate | 400 | On filing |
| 3. | 21 | Notice of change of information | 50 | On filing |
| 4. | 22 | Filing of annual status report | No fee | On filing |
| 5. | 22(4)(e) | Late filing fee for annual status report | 250 | On filing |
| 6. | 23 | Notice of cessation of business activity | No fee | Not applicable |
| 7. | 24(6) | Application to reinstate foreign investment registration certificate | 300 | On filing |
| 8. | 30(4)(a) | Search or inspection of register | No fee | Not applicable |
| 9. | 30(4)(b) | Copy of extract from register | No fee | Not applicable |
| 10. | 41 | Re-issue of existing certificate | No fee | Not applicable |

## SCHEDULE 4

(Regulation 3)

For office use only

## FORMS

### Form 1 | Application for a Foreign Investment Certificate

*Section 14, Foreign Investment Act 2020*

**Note**

If there is insufficient space on the form for the information required, please use a separate sheet and attach to this form and clearly indicating the question being answered.

### 1. Identification of Applicant

A. Complete this section if the Applicant is an incorporated business entity:

| |
|---|
| Full registered name: |
| Country of incorporation: |
| Registration number in country of incorporation: |
| Business address: |

*If there is more than one Applicant please provide the above-requested information on an attached sheet.*

| |
|---|
| Email address: |
| Telephone number: |

B. Complete this section if the Applicant is an individual person(s):

| |
|---|
| Full legal name: |
| Nationality shown on passport: |

| Passport number: |
| --- |

| Residential address: |
| --- |