



Tonga

# **FOREIGN INVESTMENT REGULATIONS**

**Chapter 38.18.1**

**2016 Revised Edition**





## FOREIGN INVESTMENT REGULATIONS

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# FOREIGN INVESTMENT REGULATIONS

*Made under section 18 of the Foreign Investment Act<sup>1</sup>*

Commencement [2nd April 2007]

## 1 Short Title

These Regulations may be cited as the Foreign Investment Regulations.

## 2 Interpretation

In these Regulations, unless the context otherwise requires –

“Act” means the Foreign Investment Act;<sup>2</sup> and

“Application” means an application for a Foreign Investment Registration Certificate made under the Act and “applicant” shall have a corresponding meaning.

## 3 Reserved list

For the purposes of section 4(1) of the Act, the Reserved List is prescribed in Schedule 1.

## 4 Restricted list

For the purposes of section 4(2) of the Act, the Restricted List is prescribed in Schedule 2.

## **5 Prohibited list**

The list of prohibited activities is prescribed in Schedule 1 of the Business Licences Act.<sup>3</sup>

## **6 Application for Foreign Investment Registration Certificate**

- (1) An application for a foreign investment registration certificate shall be –
  - (a) made in the form prescribed in Form 1; and
  - (b) filed with the Ministry of Labour, Commerce and Industries.
- (2) Where an application is –
  - (a) incomplete, the Secretary shall request the applicant in writing to complete the application; or
  - (b) complete, the applicant shall be issued with a receipt indicating the date of receipt.

## **7 Issue or refusal of Foreign Investment Registration Certificate**

- (1) Where a completed application is received, the Secretary shall within 7 working days either issue the applicant with a certificate or advise the applicant in writing of the grounds for refusing the application.
- (2) A foreign investment registration certificate shall be issued in the form prescribed in Form 2.

## **8 Foreign Investment Register**

- (1) The Secretary shall establish and maintain a foreign investment register in a form approved by the Secretary.
- (2) The foreign investment register shall contain the following information —
  - (a) the name of the applicant;
  - (b) the Registration number of the certificate;
  - (c) the name and nominated address in Tonga of the holder of the certificate;
  - (d) the business activity which is approved;
  - (e) details of any prescribed conditions applying to the approval of the certificate; and
  - (f) date of issue of the certificate.
- (3) The foreign investment register shall be available for inspection or copying of entries by the public during normal business hours upon payment of the prescribed fees set out in Schedule 4.

- (4) Where a certificate is transferred under section 13 of the Act, the details of the transferee shall be added to the foreign investment register.
- (5) Where a certificate is cancelled under section 11 of the Act or by operation of any other relevant law, the foreign investment register shall contain details of the date of cancellation and the reason for cancellation.

## **9 Transfer of certificate**

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

## **10 Cancellation of Certificate**

- (1) Where the Secretary proposes to cancel a certificate pursuant to section 11 of the Act, the Secretary shall advise the holder of the certificate by notice in writing —
  - (a) of the reason for the proposed cancellation; and
  - (b) that the holder has an opportunity to make a written submission to the Secretary within 14 working days.
- (2) Subject to sub-regulation (1) the Secretary shall, within 14 working days, review all information submitted by the holder of the certificate.
- (3) Where the Secretary makes a decision to cancel the certificate, he shall advise the holder in writing, within 7 working days of —
  - (a) the reason for his decision; and
  - (b) the certificate holder's right of appeal under the Act.

## **11 Appeal to Minister**

- (1) An appeal made under the Act shall be made in writing to the Minister within 14 working days of receipt of the notice to the applicant.
- (2) The Minister shall within 7 working days appoint an Arbitrator to decide the appeal.
- (3) The Arbitrator shall within 28 working days from being appointed decide the appeal and provide the Minister with a written decision.
- (4) The Minister shall within 7 working days of receiving the Arbitrator's written decision advise the applicant in writing of the decision of the appeal.

## **12 Appeal to Supreme Court**

A foreign investment business whose certificate is cancelled by the Secretary under section 11 of the Act may appeal to the Supreme Court against the decision to cancel the certificate and any such cancellation shall be suspended pending the outcome of the appeal.

## **13 Time cancellation comes into effect**

Where the Secretary cancels a certificate in accordance with section 11 of the Act, the cancellation shall not come into effect until in the case of the holder of a certificate who –

- (a) does not exercise a right of appeal, within 28 working days as specified under regulation 11(3); or
- (b) exercises a right of appeal, within the time prescribed under regulation 11, from the date of judgment.

## **14 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 shall within 30 working days advise the Secretary in writing of the changes.
- (2) Where the Secretary receives a notice under sub-regulation (1), he shall amend the register within 7 working days of receiving the notice.
- (3) Where the Secretary receives a notice under sub-regulation (1), he 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, he shall within 7 working days of the amendment provide notice in writing of the amendment to the holder of the certificate.

## **15 Fees**

The fees prescribed in Schedule 4 shall apply for the purposes of these Regulations.



**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. Wholesaling activity
6. Baking of white loaf bread
7. 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
8. Raising of chicken for the production of eggs
9. Security business
10. Export of green and mature coconuts
11. Wiring and installation of residential and commercial buildings with capital investment of less than \$500,000
12. Production / Farming of:
  - (a) root crops (yams, taro, sweet potato, cassava);
  - (b) squash;
  - (c) paper mulberry;
  - (d) pandanus ; and
  - (e) kava
13. 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: <ul style="list-style-type: none"> <li>- Tuna fishing</li> <li>- Bottom fishing in water deeper than 500m</li> <li>- Other deep water fishing not less than 100 m</li> </ul>	Subject to their respective Resource Management Plan (administered by the Ministry of Fisheries)
2.	<ul style="list-style-type: none"> <li>- Aquaculture</li> </ul>	Subject to the requirements of the Pesticide Act
3.	Agricultural supply store distributing seeds, fertilizers, chemicals.	Subject to requirements of the Education Act
4.	Education facility  Medical or Health activity	Subject to the requirements of the Public Health Act; Therapeutic Goods Act; Nursing Act; Medical and Dental Practices Act; Pharmacy Act; Health Practitioners Review Act.

**SCHEDULE 3****(Regulation 15)****FEEES**

<b>Item</b>	<b>Activity</b>	<b>When payable</b>	<b>Fee \$</b>
1.	Application for a certificate	When application is made	\$100
2	Application to amend a certificate.	When application is made	\$15
3	Application to transfer a certificate	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

**FORMS****FORM 1****Ministry of Labour, Commerce & Industries**

**P.O. Box 110, Nuku'alofa, Tonga**  
**Tel: (676) 27302 Fax: (676) 23887**  
**E-Mail: [secretary@mlci.gov.to](mailto:secretary@mlci.gov.to)**

## APPLICATION FORM

*for***FOREIGN INVESTMENT REGISTRATION CERTIFICATE**

Notes in *italics* in this form are intended for general guidance only

**FOREIGN INVESTOR INFORMATION****1. Proposed Name of Foreign Investment Business****2. Intended Address of Foreign Investment Business:**

Street Name

Town

Island

**3. Authorized/Nominated Contact Person:**

Title

First Name

Last Name

Position in Foreign Investment Business:

Mailing Address:

Business Phone:

Mobile No:

Fax:

E-mail:

**4. Nominated Mailing Address in Tonga:**

Postal Box

Town

Island

**5. Ownership Structure of Foreign Investment Business:**

- Sole Proprietor  
 Partnership  
 Company

**6. Details of Owners**

*If sole proprietor or partnership, please provide details of individual owners;*

*If company, please provide details of individual shareholders*

Name	Date of Birth.	Position	Residential address	% of Shares	Country of Citizenship

*(Please attach a separate page if more space is required to list all such persons.)*

**BUSINESS ACTIVITY & INVESTMENT INFORMATION:**

**7. Description of Business Activity**

➤ Do you intend to carry on business in the following categories of activities?

- Commercial Fishing  
 Yes ( ) No ( )

If you answered (Yes) above, have you complied with the respective Resource Management Plan administered by the Ministry of Fisheries?

Yes ( ) No ( )

- Agricultural supply, store distributing seeds, fertilizers and chemicals

Yes ( ) No ( )

If you answered (Yes) above, have you complied with the requirements of the Pesticide Act?

Yes ( ) No ( )

- Educational Facilities

Yes ( ) No ( )

If you answered (Yes) above, have you complied with the requirements of the Education Act?

Yes ( ) No ( )

- Medical or Health Activity

Yes ( ) No ( )

If you answered (Yes) above, have you complied with the requirements of the Public Health Act; Therapeutic Goods Act; Nursing Act; Medical and Dental Practices Act; Pharmacy Act or the Health Practitioners Review Act?

Yes ( ) No ( )

- If your intended business activity does not fall within the categories outlined in 7 above, please list and describe the activities to be undertaken by the Foreign Investment Business:

*(Please attach a separate page if required to list and describe all the activities to be undertaken)*

## 8. Investment Capital Information

Total Value of Investment

- *Foreign Citizen Investment* TOP  
 ➤ *Tongan Citizen Investment* TOP

Total Value of Fixed Assets of the enterprise TOP

## **ADDITIONAL INFORMATION:**

## 9. Current Business Involvement

- Are any of the owners (as listed under heading 6 above) involved in any other Foreign Investment Business in Tonga.

Yes ( )

No ( )

- If you answered (Yes) above, please provide details below:

Name of the Business:

Name of Shareholders:

Business Activity:

FIRC No.:

#### 10. Solvency Status

Are any of the owners (as listed under heading 6 above) an un-discharged bankrupt, in receivership or liquidation under the laws of Tonga or any other country?

Yes ( )

No ( )

#### **FOR STATISTICAL PURPOSES ONLY:**

#### 11. Proposed level of Total Investment Costs:

Year 1 (\$TOP)	Year 2 (\$TOP)	Year 3 (\$TOP)

#### 12. Proposed Level of Employment:

Tongan Citizens: \_\_\_\_\_

Foreign Citizens: \_\_\_\_\_

#### **FEES**

- Method of Payment of Fees

Purpose	Fees	Cash/Cheque
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Application for Foreign Investment Certificate	\$100	
Application for Transfer of Foreign Investment Certificate	\$45	

➤ How would you like to be notified of the decision for your application?

Method of Decision Notification	Tick as appropriate
Personal Collection	
Receive by Mail (Decision would be sent to the nominated mail address in Tonga)	

**DECLARATION:**

I/we, the undersigned, being duly authorized by the foreign investor, declare that the information contained in this application is correct and complete and I/we authorize the Secretary for Ministry of Labour, Commerce & Industries to make all necessary inquiries and to conduct all necessary action in relation to this application.

Name(s): .....

Position(s): .....

Signed at: ..... this ..... day

Of ..... , .....  
 Month year

Signature (s): .....

The completed form should be submitted either in person or by post to:

**The Secretary  
 Ministry of Labour, Commerce & Industries  
 Free Wesleyan Building  
 Fasi-mo e-afi  
 P.O. Box 110  
 Nuku'alofa  
 TONGA**

*Only fully completed, original, signed forms will be processed by the Ministry of Labour, Commerce and Industries.*





## FORM 2

**FOREIGN INVESTMENT REGISTRATION CERTIFICATE**

**Ministry of Labour, Commerce & Industries**

**FOREIGN INVESTMENT REGISTRATION CERTIFICATE**

Registration Certificate

No. \_\_\_\_\_

By virtue of the powers vested in me by section (5) of the Foreign Investment Act I hereby grant this certificate to:

*(Name of the applicant) of (Name of the company/business),*

*(mailing address in Tonga)*

to carry on business in the following relevant activities:

*(Name of the activity as it appears on the Business Licences Regulation)*

On the following condition(s):

*Stipulate the conditions (if the activity is a restricted activity)*

And also subject to the provisions of the Foreign Investment Act.

This certificate is not transferable and remains valid until it is surrendered or cancelled

Date of Issue: \_\_\_\_\_

.....  
Secretary Ministry of Labor, Commerce & Industries

.....  
Official stamp

## ENDNOTES

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<sup>1</sup> GS 6/2007

<sup>2</sup> Cap. 38.18

<sup>3</sup> Cap. 40.02