



Tonga

**FOREIGN INVESTMENT REGULATIONS
2021**



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;

“PACSIIC” 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.

SCHEDULE 1

(Regulation 6)

RESERVED LIST

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

		engaged in the processing and preserving of fish.
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SCHEDULE 2

(Regulation 7)

RESTRICTED LIST

Item	Activity	Conditions
1.	<p>Fishing comprising any of the following-</p> <p>(a) industrial-scale fishing for bigeye, albacore, and yellowfin tuna (and associated pelagic fish) and industrial-scale fishing for skipjack tuna (PAC SIC 0311_01; PAC SIC 0311_02)</p> <p>(b) marine fishing on a commercial basis, in the form of bottom fishing in water of depth more than 500 metres (PAC SIC 0311_99)</p> <p>(c) other deep-water marine fishing on a commercial basis not less than 100 metres. (PAC SIC 0311_99)</p>	<p>(a) At least 30% equity held by Tongan national.</p> <p>(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.</p>
2.	<p>Retail sale in non-specialised stores with food, beverages or tobacco predominating. (PAC SIC 4711_01)</p>	<p>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.</p>
3.	<p>Any of the following activities:</p> <p>(a) growing of fruit bearing vegetables in the form of squash (PAC SIC 0113_02)</p> <p>(b) growing of perennial crops in the form of</p>	<p>(a) At least 30% equity held by Tongan national(s).</p> <p>(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.</p>

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

FORMS

For office use only

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:

Made at Nuku'alofa on this 27th day of **October, 2021.**

Hon. Tatafu Moeaki
Minister for Trade and Economic Development