

MINISTRY OF COMMERCE



INDUSTRY & LABOUR

GOVERNMENT OF SAMOA

**NATIONAL INVESTMENT
POLICY STATEMENT**



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NATIONAL INVESTMENT POLICY STATEMENT

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ACRONYMS

WTO	-	World Trade Organization
WAIPA	-	World Association of Investment Promotion Agency
HIPA	-	Head of Investment Promotion Agency
NZ	-	New Zealand
VAGST	-	Value Added Goods & Services Tax
EPC	-	Electric Power Corporation
SWA	-	Samoa Water Authority
EIA	-	Environment Impact Assessment
PUMA	-	Planning Urban Management Agency
ODS	-	Ozone Depleting Substances
SAT	-	Samoa Tala
IR	-	Inland Revenue
USA	-	United States of America
ASYCUDA	-	Automated System for Customs Data
MFAT	-	Ministry of Foreign Affairs and Trade

INTRODUCTION

The Government of Samoa believes that promoting private sector investment is an initial phase for achieving the national vision of a “**better quality of life**” for its people. Thus it is committed to strengthening a positive enabling environment for private sector performances and also to encourage the promotion of their investments.

The private sector is expected to lead development by investing in the production of goods and services to meet both domestic demand and contribute to export earnings. The Government acknowledges that the domestic private sector cannot do this alone. It therefore actively seek foreign direct investment to strengthen the economy through the inflow of new capital, technology and management skills. Foreign investors are invited to invest in business activities without limitations, except for a few activities reserved for locals as provided under the Foreign Investment Act 2000.

The Government has streamlined legislation and procedures to encourage the establishment and expansion of enterprises capable of providing increased employment opportunities and contribute substantially to widening the economic base of the country. The establishment of the Cabinet Investment Advisory Committee to speed up the facilitation of major investment activities is a reflection of this commitment by Government.

The Investment Policy Statement sets out the Government policies for promoting and facilitating private sector investment. The Government is committed to these policies and continues to review them in an endeavour to further improve the environment for private sector development.

As the policies outlined herein may change, investors are advised to contact the Ministry of Commerce, Industry and Labour for any updates.

I. INVESTMENT GUARANTEE

The provisions of Article 14 of the Constitution shall apply to all foreign investment in Samoa, with the following guarantees also provided:

Intellectual Property

To protect and safeguard intellectual property in Samoa, the Government has passed the following laws:

- a) Copyrights Act 1998 - applies to work including books, pamphlets, articles, computer programs, speeches, lectures, musical works, audiovisual, works of architecture etc.
- b) Trademarks Act 1972 - includes a device, band, heading, label, ticket, names, signature, word, letter, numeral or any combination thereof.
- c) Patents Act 1972 - applies to an invention. An invention means, *any manner of new manufacture and any new method of application of known processes.*
- d) Industrial Designs Act 1972 - refers to the features of lines or colours designed to give a special appearance to an industrial product to serve as a pattern for manufacture of the product.

Dispute Settlement

The provisions of the Arbitration Act 1976 shall have full effect in relation to disputes that involve foreign investors in Samoa. Subject to this Act and to any other law in Samoa, the Convention Settlement of Investment Disputes signed in Washington on 3rd February 1978 and ratified by Samoa on the 25th April 1978, shall have the force of law in Samoa.

The Alternative Dispute Resolution Act 2007 also provides alternative dispute resolution procedures where civil or criminal cases may arise

Investor Protection & Fairness of Treatment

Procedures of establishing all businesses are provided under existing legislations such as that of the Companies Act 2001, the Business License Act 1998, Labour and Employment Act 1972 and the Central Bank Act and Guidelines, Health Ordinance 1959 (Part 11, 111 clause 13 & 15)

Legislative reforms underway are geared toward compliance with WTO objectives. Samoa's main objective of becoming a member of the WTO is to obtain the security offered by these rules and principles such as its non-discriminatory objective. Samoa's current reforms and outward-looking economic policies complement its accession.

Stability of the Investment Climate

Specific reform efforts and initiatives targeting the facilitation of Investment commenced in 1997 with focus on improving market access and research; review of tax and tariffs structure; arrangements to ensure the availability of Land for business development on a lease basis, and the privatization of State Owned Enterprises.

Non-commercial risk

Government appreciates that Foreign Investors uncertainty in investing in a new country can be partly alleviated if they have access to some form of internationally recognized investment protection.

Consequently Samoa is a member of the World Association of Investment Promotion Agency (WAIPA) and the regional Head of Investment Promotion Agency (HIPA).

Foreign Exchange transactions

Under the Central Bank Act 1984, the foreign investor has the freedom of foreign exchange transactions during their normal operation of the enterprise as follows:

- a) freedom to repatriate profits and capital;
- b) freedom to repay principal and pay interest on foreign loans raised for the purposes of the investment;
- c) freedom to pay fees to foreign parties, particularly for the use of intellectual property rights.

II. INDUSTRY POLICY

Business Names

Company names and registered trademarks can be protected in Samoa by submitting an application to the Registrar of Companies within the Ministry of Commerce, Industry and Labour.

Company Registration

Companies must register under the Companies Act 2001 within the Ministry of Commerce, Industry and Labour. The Companies Registry includes Incorporated Societies, Cooperative Societies, Charitable Trusts and Unions.

Business License

Under the Business License Act 1998, ALL entities engaged in business activities must have a valid business license. Applications are submitted to the Ministry of Revenue.

An Annual business license fee is charged as follows:

- SAT\$220 for Sole Traders and Partnerships and
- SAT\$500 for Companies.

VAGST Registration

Businesses are required to register with the Ministry of Revenue for VAGST (Value Added Goods & Services Tax). A self-assessment system exist similar to that of other countries.

III. INVESTMENT POLICY

Facilitation and Promotion

The Industry Development and Investment Promotion Division within the Ministry of Commerce Industry and Labour facilitates, promotes, approves, registers and monitors foreign investment in Samoa. Both local and foreign investors intending to establish a business in Samoa should consider it their first stop for obtaining investment information along with various Assistance programs the Ministry administers.

Foreign Investment definition/eligibility

For the purpose of the Foreign Investment Act 2000, Foreign Investment is the involvement of any non-citizen, or any company in which a non-citizen holds a shareholding of at least 10% in any business or economic activity in Samoa.

Any business which is owned entirely by a citizen or citizens, but which operates under a franchise agreement with a non-citizen or citizens, who does not reside in Samoa, shall not be regarded a foreign investment.

Foreign Investment Registration

The Foreign Investment Act 2000 requires businesses with foreign shareholding to have a Foreign Investment registration certificate from the Ministry of Commerce, Industry and Labour prior to obtaining a business license from the Ministry for Revenue.

Reserved List of Activities

The Government of Samoa has reserved some investment activities for local citizens investment, these sectors are currently listed in section 3(1), Schedule of the Foreign Investment Act 2000 as follows:

- Buses for transportation of the general public
- Taxis for transportation of the general public
- Vehicles for Hire
- Retailing
- Saw milling

Restricted List of Activities

The investment environment in Samoa is relatively open with only a handful of regulated sectors. The Foreign Investment Act 2000 is currently under review as well as the development of the Restricted Lists. The Ministry of Commerce Industry and Labour is compiling the list of restricted activities as follows:

- Ownership ratio for the Fishing Industry is 60% / 40%

Prohibited List

The Business License Act 1998 prohibits the following activities to be operated either by foreign investors or locals

- a) Nuclear and toxic waste disposal or storage
- b) Export of products that are prohibited under any law
- c) Prostitution
- d) Processing and export of endangered species
- e) Production of weapons of warfare.

V. INDUSTRIAL INFRASTRUCTURE**Electricity**

The Electricity supplier in Samoa is the Electric Power Corporation and administered under EPC Act 1980, EPC Amendment Act 1989 & EPC Amendment Act 1992.

The Ministry of Finance and a group of Consultants are developing new legislation (Electricity Bill) which will provide for the regulation of electricity regarding suppliers and providers etc

Water

Samoa Water Authority is administered under Samoa Water Authority Act 2003. The SWA is responsible for the installation and connection of water to all households and commercial factories.

Building License

Any person, including businesses, intending to construct a house/factory requires a Building Permit from the Ministry of Work Transport & Infrastructure. The builder must submit an application in the prescribed format and must submit the following: (i) Site Plan (ii) Elevation Details (iii) Sections (iv) Plumbing Plan (v) Electrical Plan

VI. ACCESS TO LAND

Leasing of Land

In accordance with the Alienation of Customary Land Act 1965 and the Alienation of Freehold Land Act 1972, Land may be leased for up to 30 years renewable once in the case of land leased or licensed for industrial purposes or a hotel and 20 years renewable once in the other cases.

Land holdings and ownership in Samoa fall into three (3) categories:

1. Customary Land

These lands are not for sale but can be leased out to foreigners as well as locals. All leased land in this category are registered with the Ministry of Natural Resource and Environment. In case of dispute, ownership is decided by the Ministry of Justice and Courts Administration.

2. Public Land

The Ministry of Environment and Natural Resources administers the database of Government land available for lease. Applications for leasing of land should be submitted to the Chairman of the Samoa Land Board.

3. Freehold Land

Freehold land cannot be sold or leased to someone who is not a citizen of Samoa, unless with the proper consent of the Head of State of Samoa.

VII. ENVIRONMENTAL PROTECTION

Part VIII of the Lands and Environment Act 1989 covers conservation and environmental issues. A national strategy for the protection and management of infrastructure assets in coastal areas requires all coastal developments to undertake an Environment Impact Assessment (EIA).

Planning & Urban Management Agency

PUMA is an established Agency under the Planning and Urban Management Act 2004. This division is under the Ministry of Natural Resource and Environment that deals directly with promotion of sustainable use, development and management of Natural and Physical Resources.

All projects require a **Development Consent** from the PUMA office.

Decision:

- The Agency assesses the Development Consent Application and make Recommendation on whether consent should be granted or refused.
- If estimated cost of the proposal is less than SAT\$1million the Agency makes the decision.
- If more than SAT\$1million the Agency makes recommendations and present it to the PUMA Board for decision.
- Both the applicant and the submitter have the right to appeal if the decision is not favourable.

Water Resource Management

The Ministry of Natural Resources and Environment is currently developing the Water Resource Management Act with its objectives to:

- Make comprehensive provision for all aspect of water resource management in Samoa
- Replace the outdated Water Act 1965 and
- Provide a firm foundation for the formulation, implementation and application of water resources policies, plans and strategies.

State Control of Water Resources

- a) The sole right to use, or to permit the use of water in lakes, rivers, falls, streams, springs and aquifers in Samoa for the purpose of supplying water to different users or for the purpose of generating or storing electricity or other power remains vested to the Government of Samoa.
- b) The granting of rights to take or use water referred to in (a) may only be done in accordance with the provisions of the Water Act

Rights of Key State utilities to access Water Resource

In ensuring the rights of the key state utilities the new law will recognize the following:

- a) the rights of the Electric Power Corporation (EPC), Samoa Water Authority (SWA), and community water schemes to access and use the water resource;
- b) the rights of the new Fire and Emergency Services to access water for fire fighting purposes;
- c) The rights of other relevant agencies should be considered and appropriate provision in relation to them can also be made.

National Ozone Unit

The main aim of the National Ozone Unit is to plan , manage, co-ordinate and monitor the implementation of Ozone Depleting Substances Policies and programmes to achieve total phase-out of all ODS in the country as Samoa's obligation under the Montreal Protocol.

The following Acts & Regulations directly deals with the total phase out of all ODS Substances in Samoa:

- The Land Survey & Environment Act 1989, section 146 (X)
- The Customs Tariff (Amendment) Act 1984
- Protection Ozone Layer Regulation 2006

Licensing System

Since Samoa does not produce ozone depleting gases but depend mainly on imports is vital to its phase-out strategy. Hence the regulations provide a legal basis for the establishment and implementation of the licensing system. The Licensing system serve as the main tool controlling and monitoring the import at any port of entry and at the same time serve to monitor the national consumption of Ozone Depleting Substances. In particular it provides for specific procedures that applicants must follow when applying for a license or permit to import and or handle ozone depleting substances.

Other Acts concern with the Environment Protection are:

- Forest Act 1967 which is currently under review
- Marine Pollution Prevention Act 2008

VIII. EMPLOYMENT POLICY

One of Samoa's main assets is its people. Under the Labour and Employment Act 1972, the Ministry of Commerce, Industry and Labour promotes full employment of the country's workforce.

The Act consolidate the law relating to labour matters and to make better provisions as to conditions of employment, including wage protection, contracts of service, and termination of employment contracts, holiday and annual and sick leave, hours of work and overtime, safety and industrial health, conciliation procedure and related matters.

Labour intensive Activities

Although the Government encourages all economic activities, it particularly welcomes labour-intensive activities that develop employment opportunities for Samoa.

Wage Rate

Employers in the private sector are free to set their own wages over and above the legislated minimum wage which is currently SAT\$2.00 per hour for all workers over 18 years of age.

Social Security

Both employees and employers pay a 1% payroll levy to the Accident Compensation Corporation. A 5% payroll levy by the employer to match a 5% contribution paid by the employee to the Samoa National Provident Fund.

Expatriate Employment /Work Permits

The employment of expatriate workers is subject to a screening process. Work permits are issued for activities in which skills are not available locally.

Any foreigner desiring to work in Samoa must seek a work permit and an entry permit from the Immigration Department under the Ministry of the Prime Minister and Cabinet before traveling to Samoa.

Spouses and dependents are required to have valid visitors' permits. At the completion of the expatriate's employment term he/she is expected to leave the country.

Changing employment or sponsorship while in Samoa is not permitted.

Expatriates are required to train locals to take over their positions at the expiry of work permits as specified under the Immigration Amendment Act 2004.

Hours of work

No worker shall be required to work

- a) for more than 40hours (excluding meal times) in any one week; or
- b) for more than 8hours (excluding meal times) on any one day; or
- c) For more than 4 and one-quarter hours continuously without an interval of one hour for meal

Occupational Safety and Health

An employer must take all practicable steps to protect safety, health and welfare of employees at work and to provide and maintain safe and healthy working environment including substances, systems of work and any building or public or private area in which work takes place.

IX. FISCAL POLICY

Taxation

Samoa has no tax treaties or double taxation agreements.

Taxes on Net Income and/or Profits

- Annual tax is levied on (worldwide) taxable income including the balancing charge (or balancing allowance) arising from the sale of business assets as well as inter-corporate dividends.
- Non-residents companies having assets or business in Samoa are taxed on Samoa-source income only.
- Insurance companies are taxed on different bases and at different rates.
- Losses can be carried forward indefinitely but are not deductible against salary and wage income.
- There is no withholding tax on dividends.

- There is no tax on transfer of technology
- No capital write off

Rates

Income Tax

- Imposed under Section 4 of the Income Tax Act 1974 for taxpayers on the taxable income for a tax year at prescribed rates in the Income Tax Rates Act 1974. It is assessed on the preceding calendar year income and business pay estimated provisional tax based on the previous years taxable income.

Company Tax

- Both resident and non-resident is charged at the rate of 27%. All companies are required under Section 15 of the Income Tax Administration Act 1974 to lodge annual income tax returns in the prescribed form (IR4).

Individual's Salary and Wage Tax

- Taxpayer is assessed according to the level of income earned, at a progressive rate minimum of 10% to a maximum scale of 27%.
- The threshold amount of non-taxable income is SAT12,000

Capital Gains Tax

- Capital gains tax of 27% on profits arising from the disposal of capital assets sold within 3 years.

Small Business Tax

The taxable income of the sole trade is subject to income tax at progressive rates set out in the Income Tax Rates 1974, depending on the level of taxable income (or net profit) derived by the taxpayers.

Small business taxpayers are required to lodge annual income tax returns in the prescribed form (IR2) setting forth a complete statement of all income derived and related expenses incurred by him/her during the preceding year, together with such other particulars as may be required.

Other Taxes

- Payments to non-residents which are included in taxable income by virtue of Section 38 (overseas freight & passage money) of the Income Tax Act 1974 are subject to a 15% withholding tax.

- Payments to non-residents which are included in taxable income by virtue of Section 39 (film business of non-resident) of the Income Tax Act 1974 are subject to a 15% withholding tax.
- Payments to non-residents which are included in taxable income by virtue of Section 40 (interest income derived from Samoa; all royalties & other like payments; the supply of scientific, technical, industrial or commercial knowledge information or assistance) of the Income Tax Act 1974 are subject to a 15% withholding tax.
- The Trust's taxable income of the trust shall be deemed to be derived by the trustee(s) of the trust and the trustee shall be assessable and liable for income tax as he/she was beneficially entitled to the taxable income of the trust.

Value Added Goods and Services Tax (VAGST)

- A tax on consumption charged and accounted for at the rate of 15%.
- Exceptions apply in the case of exempt supplies and supplies charged at the rate of 0%.
- Threshold Amount: SAT\$78,000

Exempt Supplies

- Locally produced raw and unprocessed food
- Financial Services
- Donated Goods and Services sold by non-profit bodies
- Bus and Taxi fares
- Electricity
- Departure Tax
- Passenger fares on inter island ferries in Samoa
- Overseas funded aid projects

Zero-rated Supplies

- Exported goods
- Duty free goods and the sealed bag system
- Certain 'exported' services
- Goods not in Samoa at the time of supply
- Educational services provided by approved situations
- Medical goods and services supplied by the hospital
- Sale of a "going concern"
- Supply of water by the Water Authority

Penalties

- 10% late payment on the first month
- 2% penalty on the balance outstanding on a monthly basis
- Penal tax penalty up to 300% of the amount outstanding

Arrangement for Settlement of Arrears

- 30% deposit of total arrears
- Part payments - amortized within a period of 2 years

X. MONETARY POLICY

Exchange Control

The exchange rate is linked to a trade weighted basket of currencies of Samoa's main trading partners (namely USA, New Zealand, Australia, Japan, Fiji and the European Euro) based on trade remittances, travel and tourism spending.

There are no restrictions on foreign exchange for current transactions and anyone may operate external or Foreign Currency Accounts with one of the Commercial Banks in the country, given the approval of the Central Bank of Samoa continues to administer capital account transactions under the Exchange Control Regulations 1999.

Investments outside Samoa and private sector external borrowings are subject to exchange control regulations. Authorized Banks may obtain Foreign Currency Accounts in the name of Corporate Bodies residing outside of Samoa. All foreign exchange transactions are monitored by the Central Bank of Samoa for statistical and policy purposes.

Repatriation of Funds

- Repatriation of capital and profit remittances on foreign capital is permitted, although it must be approved by the Central Bank of Samoa based on submission of necessary documents.
- Expatriate workers with local contracts of one year or longer are considered residents and therefore need Central Bank of Samoa approval if they wish to repatriate funds in excess of 80 percent of their net earnings on a fortnightly basis. Earnings not repatriated at the end of the contract.

Local Borrowing

The policy on local borrowing by foreign controlled companies reflects national interest considerations as determined by the Central Bank of Samoa. Investors are encouraged to acquire capital funds from overseas. However local borrowing is generally flexible but still subject to commercial financial institution requirements.

Interest Rates

Interest rates for borrowing are not regulated. Commercial Banks are free to determine the level of interests on deposits and loans based on market forces affecting demand and supply of money.

XI. TRADE POLICY**IMPORTS****Licenses**

Commercial importers are required to hold a Business License to engage in importing.

Tariffs

- Harmonized System (HS) effective as from 1 July 1996 Import duty is assessed on cost-insurance freight (cif) basis.
- Excise tax is applied on tobacco, soft drinks and alcoholic products, petroleum and on motor vehicles with engine capacity of over 2000cc.
- Tariffs have been substantially reduced in light of government's reforms. Capital items and bulk of raw materials at 8% duty respectively plus VAGST.

Procedure

Importers are required to submit import entries to the Ministry for Revenue for appropriate assessment and are also required to pay full duty based on the Ministry's assessment.

An Automated System (ASYCUDA) for imports is in place to assist in the processing of import entries and customs valuation.

EXPORTS

There are no government fees or levies charged on exports. An Export Form is required to be lodged with the Central Bank for foreign exchange monitoring purposes and then to the Ministry for Revenue for exports.

All business export receipts from goods shipped to countries other than American Samoa by all businesses must be surrendered to an authorized bank within three months of the date of shipment.

Export proceeds from goods shipped to American Samoa must be surrendered to an authorized Bank within four weeks from date of shipment.

Prohibited Exports

The exporting of raw logs of timber, and live coral are prohibited.

Trade or Export Promotion

The Ministry of Foreign Affairs and Trade facilitates and offers technical assistance to exporters in promoting their goods and services overseas.

TRADE AGREEMENTS

Samoa is a member to a number of regional and international trade agreements which is administered by the Ministry of Foreign Affairs & Trade. For further information please refer to Trade Policy Statement (MFAT).

For any enquiries please contact:

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