

## **Openness to Foreign Investment – Tonga 2010**

The Government of Tonga seeks to be welcoming to business and investors. Many Tongans have lived in or visited the United States, and American products are readily recognized.

Legislation simplifying foreign investment and streamlining business registration procedures came into effect April 1, 2007. Tonga became the 151st member of the WTO in June 2007.

In November 2006, a pro-democracy demonstration degenerated into a large-scale riot. Rioters destroyed or damaged some 80% of the capital's central business district. Reconstruction is underway, aided in part by government secured funds providing low interest loans for reconstruction projects. Parliament debated democratic reform measures in 2009, and with support from the King, democratic processes leading to new parliamentary elections are ongoing in 2010.

New customs and excise regulations that came into effect on July 1, 2008 grant exemptions from import duty on capital goods.

The Ministry of Labour, Commerce and Industries (MLCI) administers Tonga's foreign investment policy and regulations. Foreign invested businesses must obtain and hold valid foreign investment registration certificates. The application fee is about US \$50 and can be obtained by applying to the Secretary of the MLCI. Certificates are valid until the business terminates activity. If a business does not commence activity within a year after a certificate is issuance, the certificate becomes invalid.

After obtaining a foreign investment certificate, an investor must apply for a business license. The application, which must be accompanied by a valid foreign investment registration certificate, can be made to the Business Licensing Officer at the MLCI. The MLCI also processes company registrations. A foreign company that wishes to do business in Tonga must apply for incorporation under the Companies Act 1995. The applicant must first reserve the company name at a cost of about US \$30. The fee to register is about US \$300. For a company to qualify as a "Tongan company," the majority share-holder must be Tongan. Partnerships and sole proprietors need not register but must have a valid business license. The Companies Amendment Act 2009 requires all companies currently registered in Tonga to apply for re-registration under this act from December 1, 2009 - May 31, 2010. Failure to do so, will result in the company's deregistration.

Land cannot be bought or sold in Tonga, but may be leased through formal lease arrangements. Leases are usually 50 years in duration, although the law permits terms up to 99 years. The government has designated areas for small industry development, known as Small Industry Centers, on the two main islands. Foreign investors are prohibited from doing business in certain sectors. An updated list of these sectors can be obtained from the MLCI.

## **Conversion and Transfer Policies**

The National Reserve Bank of Tonga exercises control on foreign receipts and payments. Repatriation of funds, including dividends, profits, capital gains, interest on capital and loan repayment and salaries, is permitted, with the following exceptions:

--when an industrial enterprise is partly financed by locally raised capital (including working capital), in which case the repatriation of funds will be related to the extent of foreign financing; that is, repatriation will be regulated on a pro-rata basis;

--in respect of capital gains, the amount eligible for repatriation will be restricted to the amount transferred inward through the banking system or by other approved methods; and

--expatriate employees will be allowed to remit overseas wages and salaries received in Tonga up to the amount on which income tax has been paid.

Obtaining foreign exchange is not difficult.

## **Expropriation and Compensation**

Expropriation has not recently been an issue in Tonga.

## **Dispute Settlement**

Tonga has a robust judicial system, staffed at the highest level by expatriate judges. The country's legal system is generally capable of enforcing contractual rights. Tonga has no formal bankruptcy law. There have been no high-profile investment disputes over the last five years. Legislation states that the provisions of the United Kingdom's Arbitration Act 1996 governs arbitration under Tonga's Foreign Investment Act. Tonga ratified the Convention on the Settlement of Investment Disputes in 1990.

## **Performance Requirements and Incentives**

Investment incentives include:

-- Guaranteed long-term space and land leasing in the Small Industries Center, a 12-acre industrial estate, located about one kilometer from the center of Nuku'alofa;

-- Residential and work visas for foreign investors and their families for as long as the enterprise is in operation;

-- Priority for electricity, telephone, and water connections.

Technical and promotional assistance from the MLCI is available to help prospective investors identify, evaluate and set up industries. Once a business license is obtained, the business can operate.

Although the Foreign Investment Act specifies activities reserved for local businesses and included a list of these activities, the government allows full ownership by a foreign investor in cases where manufacturing activities use imported raw materials for export, or where the investments are too large for local investors. Projects are considered on an individual basis. The government generally encourages joint ventures.

### **Right to Private Ownership and Establishment**

Both foreigners and domestic investors have equal rights for incorporating/establishing entities. Foreign investment legislation that came into effect in 2007 contains a list of thirteen business activities reserved solely for Tongans and separate list of business activities open to foreign investors. Tonga's Business Licenses Act has a separate list of activities reserved for Tongans.

### **CORPORATIZATION/PRIVATIZATION OF STATE-OWNED ENTERPRISES**

A key aim of the government's on-going economic reform program is to corporatize and eventually privatize agencies that perform non-core government functions.

### **Protection of Property Rights**

Tonga has legislation protecting patents, utility models, designs and trade marks. A bill on enforcement and border measures has been endorsed by the cabinet and is currently under consideration. This legislation aligns Tonga's laws with its WTO obligations and contains stricter border controls for counterfeit products. Counterfeit products are widely available on the local market.

### **Transparency of Regulatory System**

While it remains somewhat challenging to establish a business, the government has instituted reforms to make the procedures and processes easier and quicker for investors. The World Bank lists Tonga as the 43rd easiest country in which to do business.

It is not a practice in Tonga for parliament or government agencies to publish draft bills or regulations for public comment.

### **Efficient Capital Markets and Portfolio Investment**

Foreign investors are generally able to obtain credit on the local market. The Tonga Development Bank (TDB), with assets totaling around US \$30 million, finances development projects that meet the TDB's criteria. In December, 2007 the TDB had a loan portfolio of around US \$25 million. There are also three international commercial

banks, which together had approximately US \$160 million in domestic private sector loans outstanding in December 2007.

### **Political Violence**

In November 2006, political protests degenerated into a large-scale riot. Numerous buildings were attacked, looted and burned. Rioters particularly targeted businesses associated with the royal family and businesses owned by ethnic Chinese and Indians. Approximately 80% of Nuku'alofa's central business district was destroyed or significantly damaged.

Subsequently, a state of emergency was declared, empowering the Tonga Defence Services to restore law and order within 24 hours of the events. The emergency powers given to the Tonga Defence Services, repeatedly extended over the past three years for durations of 30-days is still in force. Total damages were estimated to be about US\$62 million. Businesses are under reconstruction, aided in part by funds obtained by Tonga's government and used to provide low interest loans for reconstruction.

### **Corruption**

Corruption has not been specifically identified as an obstacle to foreign investment. Both corruption and bribery are criminalized and prosecuted and the laws appear to be impartially applied.

The Office of the Anti-corruption Commissioner is charged with investigating official corruption. There are no international non-governmental "watchdog" organizations represented locally, and the country was ranked 99 out of 180 on Transparency International's Corruption Perceptions Index 2009.

### **Bilateral Investment Agreements**

Tonga is party to a bilateral investment treaty with the United Kingdom. It is not party to any other bilateral investment treaties.

### **OPIC and Other Investment Insurance Programs**

Overseas Private Investment Corporation (OPIC) insurance is available to investors in Tonga, and OPIC provides political risk insurance, finance, direct loans and loan guarantees.

### **Labor**

The 2006 Census placed the unemployment rate at 4.9%. This rate does not reflect the significant number of people who are underemployed. Just over 60% of people in paid employment are male. Over two-thirds of all employed people held paying jobs in the

rural areas while the rest are in urban areas. About half of those employed in the rural areas work in the agriculture industry.

Wages and salaries are comparatively low. Wages, salaries and other conditions of work in the private sector are a matter of direct negotiation between employers and workers.

There are currently no trade unions in Tonga, although there is legislation permitting unions to form. The Public Servants Association operates as a de facto trade union for civil servants.

Local skilled labor is available in sufficient quantities to undertake most types of building work, except for some specialized skills and supervisory-level manpower, which is generally recruited from abroad.

### **Foreign-Trade Zones/Free Ports**

Tonga does not operate any foreign trade zones or free port facilities.

### **Foreign Direct Investment Statistics**

The U.S. Commerce Department's Bureau of Economic Analysis records no U.S.-sourced FDI stocks for Tonga.

According to the MLCI, over 150 foreign companies are currently registered in Tonga. Foreign businesses are largely in the retail sector, and many are owned by ethnic Chinese and Indians.

### **Web Resources**

Regulatory authorities

Ministry of Labour, Commerce and Industries, P.O. Box 110, Nuku'alofa, Tonga.  
Tel: (676) 23 688  
[www.mlci.gov.to](http://www.mlci.gov.to)

Ministry of Labour, Commerce and Industries, P.O. Box 110, Nuku'alofa, Tonga.  
Tel: (676) 23 792; (676) 27302; 23 879; 28761;  
[www.companies.gov.to](http://www.companies.gov.to)

Ministry of Finance and Economic Development, Nuku'alofa, Tonga.  
Tel: (676) 23 066  
[www.finance.gov.to](http://www.finance.gov.to)

National Reserve Bank of Tonga, Private Bag #25, Nuku'alofa, Tonga.  
Tel (676) 24-057  
[www.reservebank.gov.to](http://www.reservebank.gov.to)

**Banks**

Tonga Development Bank, Hala Fatafehi, Nuku'alofa, Tonga. Tel: (676) 23 333

Email: [tdevbank@tdb.to](mailto:tdevbank@tdb.to); [www.tdb.to](http://www.tdb.to)

Westpac Bank, Hala Taufu'ahau, Nuku'alofa, Tonga

Tel: (676) 23933

[www.westpac.to/pacific/](http://www.westpac.to/pacific/)