



DOING BUSINESS IN SAMOA

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Starting a business requires sound professional advice. Clarke Ey Koria Lawyers work with foreign investors and local entrepreneurs to establish new commercial ventures. We help investors get the right start in Samoa.

Introduction to Samoa

The Independent State of Samoa is a parliamentary democracy located in the central South Pacific, to the west of the International Date Line. Formerly known as Western Samoa, the country has been known as Samoa since 1997. It is comprised of 2 main islands and several smaller islands.

The Samoan population of approximately 200,000 people includes people of Samoan, other Pacific islands, Chinese and European origin. English and Samoan are the official languages and English is widely spoken across business and government.

Samoa is close to the developed country markets of Australia and New Zealand. Her economy is based on agriculture, tourism, external remittances and fisheries. Samoa's transport infrastructure is well-developed (including air and shipping services). Telecommunications infrastructure has international connectivity via several submarine fibre cables and 2 advanced mobile phone networks.

System of government

Samoa became an independent nation in 1962, having formerly been a New Zealand mandate and trust territory (since 1919) and German colony (prior to World War I). The system of government is based on the Westminster Parliamentary system and a written constitution. Parliamentary elections for the 51-member Legislative Assembly are held every 5 years.

The laws of Samoa have their foundations in English and Commonwealth statutory and common law.

Foreign investment and concessions

Samoa's foreign investment regime is contained in the Foreign Investment Act 2000. Businesses with any foreign ownership require foreign investment approval. This approval process is administered by the Ministry of Commerce Industry and Labour (www.mcil.gov.ws).

Samoa's foreign investment regime is largely permissive and aims to encourage foreign investors to establish business in Samoa. However, there are some restrictions on activities that can be conducted by businesses with foreign ownership. The "reserved list" of activities that can only be conducted by Samoan citizens includes retailing, transport services and sawmilling. Activities on the "restricted list", including certain fishing, manufacturing and services, require a local partner. Both the "reserved list" and the "restricted list" are currently under review by the Government. The Government also offers tax incentives to exporters and tourism developers through a duty concession scheme.

Domestic business structures

Samoa law recognizes various business structures utilized across the common law world: sole traders, partnerships, limited liability companies, joint ventures and trusts (including unit trusts). These structures are regulated by statute including the Companies Act 2001, Partnership Act 1975, Trusts Act 2014 and Unit Trusts Act 2008. Samoa's Companies Act 2001 contains a modern regulatory regime based on New Zealand company law. It allows the incorporation of a sole person company (ie one person being both shareholder and director) and directors need not be resident in Samoa.

A Samoa incorporated private company is a separate legal entity and a corporation under Samoan law. It must file an annual return with the Registrar of Companies specifying details of directors, shareholders, share parcels and registered office. There is no requirement for private companies to file annual financial reports with the Companies Registry nor are there any minimum capital requirements.

A company incorporated in another jurisdiction but which is doing business in Samoa may reregister in Samoa as an overseas company. Reregistered overseas companies must also file annual returns but are not required to file copies of financial reports with the Companies Registry.

The Personal Property Securities Act 2013 introduced an electronic registration scheme for security interests in personal property, similar to those in Australia and New Zealand. The regime replaces the old charge registration system.

Businesses operating in Samoa also require a business licence, renewable annually.

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International business structures

Samoa also offers business vehicles for international business and finance activities conducted outside Samoa. These business structures include international companies, international trusts, international banks, international partnerships, segregated fund international companies, international insurance companies, special purpose international companies and international mutual funds.

Samoa's international jurisdiction is administered by the Samoa International Finance Authority (www.sifa.ws).

Competition

Samoa's competition regime was overhauled via the Competition and Consumer Act 2016, which implements a modernized regime similar to those found in New Zealand and Australia. The Competition and Consumer Commission, supported by the Ministry of Commerce, Industry and Labour, is responsible for competition regulation in Samoa. The statutory scheme provides for competition rules, consumer protection, regulation of restrictive trade practices, certain consumer guarantees and a price control scheme for essential goods.

Competition in the telecommunications industry is also regulated under the Telecommunications Act 2005.

Buying or dealing in land

Land in Samoa is categorized as being freehold land (privately owned), public land (owned by Government) and customary land (owned communally in accordance with traditional custom and usage). Land ownership and dealings are governed by several statutory schemes. The Land Titles Registration Act 2008 provides indefeasible title based on registration for freehold and public land, using the Torrens Title system. Customary land may be leased under the Leasing and Licensing of Customary Land Act 1965, but cannot be sold or mortgaged. Public land may also be leased.

Transfers of freehold land to foreigners, foreign owned companies and non-resident Samoan citizens are subject to strict controls. The Alienation of Freehold Land Act 1972 puts in place a regime that requires the Head of State's consent to any transfers of freehold land to:

- Companies where more than 25% of the shares are owned by foreigners or non-resident Samoan citizens;
- Individuals who are not Samoan citizens, or who are non-resident Samoan citizens.

If land is transferred to such buyers without the Head of State's consent, the transfer is deemed to be unlawful and ineffective.

Taxation & stamp duty

Income tax

Income tax is levied under the Income Tax Act 2012 on the taxable income for the previous calendar year. This simplified tax code came into effect on 1 January 2013. The company tax rate is 27%.

Non-resident companies (ie a reregistered overseas company) are charged 27% tax on their taxable income derived from sources in Samoa to the extent attributable to business carried on through a permanent establishment in Samoa.

The top marginal tax rate for individuals is also 27%. This applies to assessable income over WST\$25,000.00 per annum.

Foreign-controlled companies are subject to thin capitalization requirements, so that if the company has a debt-to-equity ratio of more than 3:1, they cannot claim a deduction for interest on debts that exceed that ratio. Tax laws also include transfer pricing rules.

Dividends

Dividends paid by resident companies are tax exempt income in Samoa.

Withholding tax

Withholding tax of 15% is payable on interest earned on bank deposits etc. Non-resident withholding tax of 15% is payable on interest, royalties, certain insurance premiums, management fees, fees for personal and professional services or natural resource amounts earned by non-resident persons from sources in Samoa.

Capital gains tax

Capital gains tax is levied at 10% on capital gain arising from the disposal of capital assets sold within 12 months of the date of

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acquisition and 27% if sold after that period. The capital gains tax regime has yet to be fully implemented.

Depreciation

Depreciation is available either according to a straight line depreciation method or a declining balance method (accelerated depreciation). Depreciation is also permitted on intangible assets, such as intellectual property, customer lists, marketing intangibles and contractual rights.

Value Added Goods and Services Tax (VAGST)

Samoa's consumption tax, or VAGST, is levied on the supply of most goods and services at a rate of 15%. There are certain exempt supplies (eg local food, financial services, transport fares, electricity) and zero-rated supplies (eg exports). VAGST is also payable on imports at a rate of 15%.

Businesses register for VAGST as part of the business licence process. VAGST returns must be filed every 2 months.

Tariffs

Customs duties are currently set at four main clusters – 0%, 5%, 8% and 20% - however, higher tariffs apply to certain products, such as alcohol and tobacco. Excise duty is also imposed on alcohol, soft drinks, tobacco products and certain motor vehicles.

PAYE

Employers must deduct Pay As You Earn (PAYE) tax deductions from employee's salary payments. PAYE instalments are paid monthly to the Ministry for Revenue.

Stamp duty

Stamp duty is charged on a range of written instruments including transfers and leases of land and security documents. Stamp duty is mostly nominal. For land transfers, stamp duty is applied on a sliding scale. For transfers of property valued at less than \$50,000, stamp duty is levied at 1%. This increases in increments up to the top bracket of 4% for properties over \$200,000 in value.

International tax agreements

Samoa has a Double Taxation Agreement with New Zealand, in force since January 2016.

Samoa has signed Tax Information Exchange Agreements with Australia, New Zealand and a number of other countries. These agreements generally provide for exchange of information, on request, in both criminal and civil tax matters. Implementation of these agreements is governed by the Tax Information Exchange Act 2012. Samoa has also implemented the Common Reporting Standards for the automatic exchange of information.

Tax Invoice Monitoring System

In January 2020, Samoa introduced a compulsory Tax Invoice Monitoring System (or TIMS) as a form of tax compliance. All registered businesses with an annual turnover greater than WST200,000 are required to register and use government-issued Electronic Fiscal Devices. These produce invoices containing a QR code which can be verified by customers with the Ministry of Customs and Revenue.

Banking & exchange control

The Samoan tala is a controlled currency and the Central Bank of Samoa monitors and controls all foreign exchange movements. Central Bank approval is required for remittance out of the country of amounts greater than set limits, including for repatriation of capital and dividend payments. The Central Bank also regulates the establishment of foreign currency accounts and offshore borrowings. Bona fide remittances are routinely permitted, however, larger amounts may have to be remitted in tranches. Further information is available from the Central Bank of Samoa (www.cbs.gov.ws).

Employment & immigration

Employment law is governed largely by the Labour and Employment Relations Act 2013 which provides minimum employment conditions. Statutory leave entitlements are set at 10 days annual leave and 10 days sick leave per annum. There are mandated maternity and paternity leave provisions. The minimum wage is set at WST\$3.00 per hour (last revised January 2020).

Minimum occupational health and safety requirements are set out by the Occupational Safety and Health Act 2002. This Act contains general requirements for employers to provide and maintain a safe working environment for their employees.

The Accident Compensation Corporation runs a statutory workers' compensation scheme. Employers are required to pay a

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2% levy (1% from the employer, 1% deducted from the employee's wages) to the fund each month.

The Samoa National Provident Fund is a statutory superannuation fund. Employers are required to pay a 20% levy (10% from the employer, 10% deducted from the employee's wages) to the fund each month.

The Labour and Employment Relations Act 2013 prohibits non-citizens from undertaking employment in Samoa without an employment permit. The granting of these permits is discretionary and they are valid for up to two years. A non-citizen with an employment permit may apply under the Immigration Act 2020 for an employment visa.

Clarke Ey Koria Lawyers

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