

CITIZENSHIP INVESTMENT BILL 2014

SAMOA

Explanatory Memorandum

Introduction

The purpose of the Bill is to promote investment in Samoa by foreigners by allowing entitlement to citizenship through their investments. To be eligible for citizenship, foreigners can invest a minimum of \$4m in a qualifying investment area set out in the Bill. The Bill sets out the process of investment and applications to invest after which the investor will be initially granted a 3-year permanent resident permit before being eligible to apply for citizenship by permanent residence under the Citizenship Act 2004. The spouse and any unmarried child under 18 years of the investor or spouse can also be included in the application by the investor.

Clauses:

PART 1 - PRELIMINARY

- Clause 1:** - states that when enacted, the Bill will be called the Citizenship Investment Act 2014, and it will commence on a date nominated by the Minister.
- Clause 2:** - provides for the definitions of terms.
- Clause 3:** - provides for the application of the Act to citizens of countries who apply for citizenship by investment. It will not apply to customary land.

**PART 2 - ELIGIBILITY AND
APPLICATION FOR INVESTMENT**

- Clause 4:** - recognises that a citizen of any country is entitled to apply for citizenship by investment except citizens of countries that are excluded by Order of the Minister.
- Clause 5:** - sets out in the Schedule the qualifying investment areas, such as leasing and developing government lands, processing and manufacturing agricultural produce or fisheries, tourism, etc.
- Clause 6:** - sets out eligibility for investment i.e. investment of an amount determined by the Minister (if no amount is determined, the amount is at least \$4m) and the minimum net worth of at least \$2.5m of the investor.
- Clause 7:** - sets out leasing and developing of government land or any other prescribed land as an investment area.
- Clause 8:** - provides for the right of an investor to apply for citizenship by investment and sets out additional matters that should be attached to an application, such as investment plan, birth certificates, audited financial statements, police clearance, medical reports, etc. The investor can apply through an approved agent.
- Clause 9:** - sets out the process of carrying out due diligence on the investor (and any family member included in the application) to be carried out by a person qualified and

- experienced in undertaking due diligence check.
- Clause 10:** - sets out the procedures for processing of the application and conditions for issuing formal approval.
- Clause 11:** - entitles an applicant investor to a temporary resident permit under the Immigration Act 2004 in order to pursue the application in Samoa.

PART 3 - CITIZENSHIP INVESTMENT COMMITTEE

- Clause 12:** - establishes the Citizenship Investment Committee comprising five (5) members with the right to invite any person to give advice or assistance to it.
- Clause 13:** - sets out the functions of the Committee, which is, among other things, to receive, process and determine applications.
- Clause 14:** - sets out the meeting procedures of the Committee.
- Clause 15:** - provides for the right of appeal to an Appeal Panel comprising a lawyer and two (2) other members appointed by the Head of State acting on the advice of Cabinet.

PART 4 - RESIDENT PERMIT AND CITIZENSHIP

- Clause 16:** - provides the entitlement to permanent resident permit of three (3) years when an application is granted, subject to conditions.
- Clause 17:** - provides the entitlement to apply for citizenship by investment when the period of permanent resident permit

expires. The Committee is required to monitor the investment within the 3-year period and to provide a report to the Minister responsible for citizenship.

- Clause 18:** - sets out the conditions of citizenship, including the right to a passport.
- Clause 19:** - sets out the grounds on which permanent resident permit or citizenship by investment may be cancelled.

PART 5 - MISCELLANEOUS

- Clause 20:** - regulates promotion and marketing of the citizenship investment scheme through an approval process by the Minister except promotion and marketing undertaken by the Government, the Samoa Tourism Authority or any prescribed person.
- Clause 21:** - provides for approval of a person to act as the agent of an investor.
- Clause 22:** - obligates the Committee to prepare and submit to the Minister annual reports of its operations.
- Clause 23:** - empowers the Minister to determine amounts required for investments and to approve forms.
- Clause 24:** - empowers the Head of State acting on the advice of Cabinet to make regulations and the Minister to amend the Schedule.
- Clause 25:** - sets out consequential amendments to other Acts.

Schedule: - sets out the qualifying investment areas.



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(Hon FONOTOE Nuafesili Pierre Laufo)

**DEPUTY PRIME MINISTER AND MINISTER
OF COMMERCE, INDUSTRY AND LABOUR**

CITIZENSHIP INVESTMENT BILL 2014

SAMOA

Arrangement of Provisions

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2014, No.

A BILL INTITULED

AN ACT to regulate citizenship by investment to foreigners who make qualifying investments and for related purposes.

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1
PRELIMINARY**

1. Short title and commencement - This Act may be cited as the Citizenship Investment Act 2014, and commences on a date nominated by the Minister.

2. Interpretation-(1) In this Act, unless the context otherwise requires:

“agent” means an investor’s agent approved under section 21;

“Appeal Panel” or “Panel” means the Appeal Panel appointed under section 15;

“application” means an application made under section 8;

“charitable trust” means a trust incorporated under the Charitable Trusts Act 1965, and includes a church, other religious organisation, non-government school or non-governmental organisation;

“child” includes an unmarried step-child or an unmarried legally adopted child under 18 years of the investor or spouse;

“Citizenship Investment Committee” or “Committee” means the Citizenship Investment Committee established by section 12;

“determined amount” means an amount determined under section 23;

“family member” means the spouse of the investor or an unmarried child under 18 years of the investor or spouse;

“fixed deposit account” means the fixed deposit account of the investor mentioned under section 8(3)(b)(i);

“government development fund” means any development trust fund established or created pursuant to any enactment for the purpose of funding any income generating public project;

“government land” has the meaning in the Lands, Surveys and Environment Act 1989;

“guidelines” means guidelines issued under section 13(d);

“investment plan” means a plan setting out the details of the proposed qualifying investment by the investor;

“investor” means an individual aged 18 years or over who is a citizen of a recognised country;

“Minister” means the Minister responsible for Commerce;

“Ministry” means the Ministry responsible for Commerce;

“prescribed” means prescribed by regulations made under section 24;

“qualifying investment” means an investment in an area of investment specified in section 5;

“recognised country” means a country to which section 4(1) applies;

“spouse” means the wife or husband of an investor recognised under the laws of Samoa.

(2) Reference to any amount in this Act is a reference to Samoan Tala or its equivalent in a foreign currency.

3. Application - This Act:

- (a) applies to citizens of recognised countries who apply for citizenship by investment or have been granted permanent resident permit or citizenship by investment pursuant to this Act; and
- (b) does not apply to customary lands or any lease, licence or interest in it.

PART 2
ELIGIBILITY AND APPLICATION
FOR INVESTMENT

4. Recognised countries-(1) A citizen of any country is entitled to apply for citizenship by investment under this Act.

(2) The Minister may, by Order in the Savali, exclude any country from the application of this Act.

(3) Any Order made under subsection (2) does not affect any application for citizenship by investment granted (including any associated rights and benefits) to a citizen of a country excluded under the Order before the Order commences.

5. Qualifying investment - In order to qualify for citizenship by investment, an investor must invest in one (1) or more qualifying investments specified in the Schedule.

6. Eligibility for investment-(1) An investor is eligible to apply for citizenship by investment if the investor:

- (a) intends to invest in any qualifying investment; and
- (b) shows an ability and willingness to invest a minimum determined amount in a qualifying investment within three (3) years from the date the application is granted; and
- (c) has, at the time of the application, a minimum net worth of a determined amount; and
- (d) complies with any other prescribed conditions.

- (2) Any funds or assets required under this section must:
 - (a) be owned by the investor or jointly owned by the investor and family members; and
 - (b) be earned and acquired legally; and
 - (c) for funds, be unencumbered; and
 - (d) comply with any other prescribed requirements.

(3) Until a determined amount is made under subsection (1), the minimum determined amounts are:

- (a) for subsection (1)(b), \$4m; and
- (b) for subsection (1)(c), \$2.5m.

7. Investment on land-(1) An investor may invest, in a qualifying investment, a determined amount in developing, within three (3) years from the date of application, a lease of government land or any prescribed land.

(2) The Minister may, with the approval of Cabinet, approve any government land from which lease may be granted or approve any land prescribed pursuant to subsection (1) for the purpose of this section.

(3) The Committee may determine whether or not a lease of government land granted to or the purchase of any prescribed land by, the investor before the date of application is to be part of a qualifying investment under subsection (1).

(4) This section is in addition to any other requirements in section 6.

8. Applications-(1) An investor (or the investor's agent on behalf of the investor) may apply to the Committee for citizenship by investment in the approved form and accompanied by the prescribed fees for application and for due diligence.

- (2) Application must also include the following information:
 - (a) an investment plan, in the approved form;
 - (b) names of family members, including their birth certificates or official records of birth;
 - (c) proof of net-worth of current business and assets;

- (d) audited financial statements for the last three (3) financial years for any business in which the investor held directorship, a senior management role or proprietary interest;
 - (e) police clearance of the investor and, if relevant, any family members in their country or countries of citizenship or permanent residence;
 - (f) doctor's reports on full medical examinations of the investor and any family members;
 - (g) any other prescribed information or any other information required by the Committee.
- (3) The Committee must only consider an application if:
- (a) the prescribed fees for application and for due diligence have been paid in full; and
 - (b) the Committee has -
 - (i) proof of the opening of the fixed deposit account and the payment into that account of the amount required under section 10(2)(a); and
 - (ii) has received the report on due diligence check; and
 - (c) any other prescribed condition is met.
- (4) The investor must comply with any direction issued by the Committee on any other requirement for qualifying investment or the application.
- (5) Any document attached to the application must be the original document or a copy of the original document certified by a lawyer in Samoa or of the country where the investor resides.

9. Due diligence-(1) The Committee may engage a qualified and experienced individual or entity to conduct due diligence check on the investor and any family member.

(2) The investor and any family member are treated as having consented to due diligence being carried out on them under this Act.

(3) The Committee may also interview the investor and family member in Samoa or through any means of audio-visual or telecommunication from a place outside Samoa.

(4) The Committee may consult any other person in Samoa or another country for the purpose of due diligence.

(5) The due diligence requirements and processes are as prescribed.

10. Processing of applications-(1) The application must not be granted if the investor:

- (a) has or is believed to have provided false or misleading information in the application or information in support of the application; or
- (b) is subject to any investigation for an offence specified under paragraph (c) committed in Samoa or another country; or
- (c) has been convicted in Samoa or any other country for an offence for which the penalty is a fine of at least 500 penalty units (or its equivalent), or imprisonment of at least two (2) years; or
- (d) is considered a potential national security risk to Samoa or any other country; or
- (e) is involved in any activity that causes or likely to cause disrepute to Samoa; or
- (f) has been denied entry to Samoa or any other country to which Samoa has an arrangement for visa-free travel; or
- (g) fails to comply with any other prescribed requirement.

(2) When an application is granted, the formal approval must not be issued unless the investor:

- (a) deposits at least 70% (or instead a prescribed percentage of at least 50%) of the investment sum under section 6(1)(b) in a fixed deposit account in a bank or financial institution in Samoa; and

- (b) complete and sign all documents required for payment or investment of all sums to implement the investment plan pursuant to any guidelines; and
 - (c) complies with any other prescribed requirements.
- (3) If the application is refused, the Committee must give reasons for the refusal and send the decision and reasons to the investor or agent within 15 working days of the refusal.

11. Temporary resident permit - When the application is lodged by the investor, the investor and any family member may be issued with temporary resident permits for business purpose under the Immigration Act 2004 to allow the investor and any family member to pursue the application in Samoa.

PART 3 CITIZENSHIP INVESTMENT COMMITTEE

12. Establishment-(1) The Citizenship Investment Committee is established comprising the following members:

- (a) the Chief Executive Officer of the Ministry, as Chairperson;
 - (b) the Chief Executive Officer of the Ministry responsible for Finance;
 - (c) the Chief Executive Officer of the Ministry responsible for Revenue;
 - (d) the Chief Executive Officer of the Ministry of Prime Minister and Cabinet;
 - (e) the Governor of the Central Bank of Samoa.
- (2) The Committee may invite any person or officer of any statutory body to advise or assist the Committee when considering any application or matter but the person or officer has no right to vote on the application or matter before the Committee.

13. Functions - The Committee has the following functions:

- (a) to receive, process, determine and, with or without conditions, grant applications;
- (b) when approving an application, to recommend to the Minister responsible for Immigration the granting of permanent resident permit;
- (c) to continuously monitor the qualifying investments to ensure compliance with international best practices, investment plan or guidelines;
- (d) to issue guidelines for the purpose of this Act;
- (e) to provide report to the Minister on its functions, duties and powers when required by the Minister;
- (f) to carry out other functions under this Act or any other enactment.

14. Meetings-(1) The following rules apply at a meeting of the Committee:

- (a) meetings may be convened by the Chairperson once a month or as necessary to carry out its functions, duties and powers under this Act or any other enactment;
- (b) a meeting is to be chaired by the Chairperson or a member elected by the members present, if the Chairperson is absent;
- (c) four (4) members constitute a quorum;
- (d) the presiding member has a deliberative vote and a casting vote;
- (e) a decision is the decision supported by majority of the members;
- (f) minutes are to be kept and maintained by the Committee.

(2) Subject to this Act, the Committee may regulate its own procedures.

(3) The Chief Executive Officer of the Ministry may appoint a senior officer of the Ministry to be the Secretary of the Committee.

15. Appeal-(1) The Head of State acting on the advice of Cabinet may appoint the Appeal Panel comprising the following members:

- (a) a lawyer with at least eight (8) years legal practice, as chairperson; and
 - (b) two (2) other members who are qualified and have extensive experience in finance, trade, investment, commerce, economics or other prescribed qualification or experience.
- (2) An applicant whose application is refused may, in person or through an agent, appeal (in the approved form and accompanied by the prescribed fee) to the Appeal Panel.
- (3) The Panel may:
- (a) hear and determine the appeal; and
 - (b) dismiss the appeal and confirm the decision of the Council to grant the application; or
 - (c) allow the appeal and grant the application for citizenship.
- (4) If the Panel grants the application for citizenship, the Committee must carry out its function under section 13(b).
- (5) The Panel may require further information from the investor or further due diligence check to be carried out under section 9.

PART 4

RESIDENT PERMIT AND CITIZENSHIP

16. Permanent resident permit-(1) When an application is granted under section 13(a), the investor and any family member are entitled to be granted a permanent resident permit for three (3) years under the Immigration Act 2004.

(2) The resident permit is subject to the following conditions:

(a) the investor -

(i) may withdraw any amount in the fixed deposit account to be used in accordance with the investment plan; but

(ii) must maintain at least 15% of the original sum deposited in that account; and

(b) any other prescribed condition.

(3) The Committee may, during the 3-year period of permanent residence of the investor, continue to review and monitor the progress of the qualifying investment pursuant to the investment plan or guidelines or as the Committee considers fit.

17. Granting of citizenship by investment-(1) Within three (3) months before the expiry of the investor's permanent resident permit, the investor, including any family member, may apply in person or through the investor's agent for citizenship by permanent residence pursuant to section 8 of the Citizenship Act 2004, if the investor:

(a) has resided in Samoa for at least 15 days a year during the 3-year period of the permanent resident permit; and

(b) has complied with the investment plan to the satisfaction of the Committee; and

(c) has complied with any other prescribed requirement.

(2) A copy of the application for citizenship must be sent to the Committee for its report on the status of the qualifying investment to be given by the Committee to the Minister responsible for citizenship when considering the application for citizenship by the investor.

(3) The investor may apply under the Immigration Act 2004 to extend his or her (including any family members) permanent resident permit if the permanent resident permit expires before the citizenship is granted.

18. Conditions of citizenship by investment-(1) A citizenship by investment is subject to the following conditions:

- (a) as an exception to sections 6 and 7 of the Passports Act 2008, any passport issued under that Act to an investor or any family member is valid for five (5) years, subject to renewals for another five (5) years under that Act;
 - (b) upon granting of citizenship, the investor is entitled to invest in any other business or economic activities listed under the Reserved List and the Restricted List in Schedules 1 and 2 of the Foreign Investment Act 2000;
 - (c) any investment made must be retained by the investor for at least five (5) years;
 - (d) any other prescribed conditions.
- (2) The investor may sell an investment within the 5-year period specified under subsection (1)(c), but the investor must invest a minimum determined amount in another qualifying investment business.
- (3) If there is no determined amount under subsection (2), the determined amount is \$1m.

19. Cancellation of permit or citizenship-(1) A permanent resident permit or citizenship by investment may be cancelled under the Immigration Act 2004 or the Citizenship Act 2004 (as the case may be) if the investor:

- (a) fails to carry out the qualifying investment as required under the investment plan to the satisfaction of the Committee; or
- (b) fails to maintain the minimum determined amount under section 6(1)(b), subject to section 16(2); or
- (c) has been convicted in Samoa or any other country for an offence for which the penalty is a fine of at least 500 penalty units or imprisonment of at least five (5) years imprisonment; or

- (d) becomes a potential national security risk to Samoa or any other country; or
- (e) is involved in any activity that causes or likely to cause disrepute to Samoa; or
- (f) provided false or misleading statement or information upon which the application was granted; or
- (g) fails to comply with any other prescribed requirement.

(2) This section does not affect the provisions of the Citizenship Act 2004 and the Immigration Act 2004 on cancellation of permanent resident permit or citizenship under those Acts.

(3) If a permanent resident permit or a citizenship by investment is cancelled under this Act or any other enactment, the investor has the right to sell or dispose any property being invested and to repatriate any funds out of Samoa pursuant to the laws of Samoa.

PART 5 MISCELLANEOUS

20. Promotion and marketing-(1) A person must not promote or market, in Samoa or another country, the citizenship by investment scheme under this Act unless the Minister approves the person (“approval”) to undertake the promotion or marketing.

(2) This section does not apply to:

- (a) a Ministry or other government agency; or
- (b) the Samoa Tourism Authority; or
- (c) other prescribed person or class of persons.

(3) A person who intends to undertake promotion or marketing under this Act may apply to the Minister in the approved form accompanied by the prescribed fee.

(4) A person must not be given an approval unless the person has the qualification, experience, skills, expertise and integrity to undertake the promotion or marketing of citizenship by investment scheme under this Act.

(5) The Minister may:

- (a) impose any condition on the approval; or
- (b) amend, suspend or revoke any condition; or
- (c) impose any new condition; or
- (d) amend, suspend or, for cause, revoke the approval.

(6) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding two (2) years, or both.

21. Agents-(1) A person must not act as an agent under this Act unless the person is approved (“approval”) by the Minister.

(2) An investor may apply for citizenship by investment through an agent in Samoa approved under this section.

(3) The Minister may:

- (a) impose any condition on the approval; or
- (b) amend, suspend or revoke any condition; or
- (c) impose any new condition; or
- (d) amend, suspend or, for cause, revoke the approval.

(4) A person who intends to be an agent may send an application (in the approved form and accompanied by the prescribed fee) to the Committee to process and submit the application to the Minister for determination.

(5) An agent must inform the Committee of the following:

- (a) the registered office or principal place of business;
- (b) any change in the registered office or principal place of business;
- (c) any other matter required by the Committee relating to the agency.

(6) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding two (2) years, or both.

22. Annual reports-(1) The Committee must, before 30 June each year, prepare and submit to the Minister an annual report of the previous calendar year.

(2) The annual report must set out the following:

- (a) any application pending, refused, appealed or granted;
- (b) the details of the investors and any family members who have been granted permanent resident permits or citizenship by investment;
- (c) the amount of investment and the qualifying investments relating to applications granted;
- (d) any other prescribed information or other information considered relevant by the Committee.

(3) The Minister must present the annual report to the Legislative Assembly pursuant to its Standing Orders, as soon as practicable after receiving the report.

23. Determined amount and approved forms-(1) The Minister may, by Order in the Savali, determine an amount in the following sections:

- (a) for section 6, an amount not less than any amount respectively stated in section 6(3);
- (b) for section 7(1), an amount not less than \$1m for the purpose of leasing or purchase of any land under that section, in addition to the determined amount for developing the land;
- (c) for section 18(3), an amount not less than \$1m.

(2) A determined amount under section 6(1)(b) may specify different amount that applies to different types of qualifying investments.

(3) In determining an amount under this section, the Minister may impose other conditions or take into account any prescribed requirements.

(4) Minister may approve forms for this Act.

24. Regulations and amendment of Schedule-(1) The Head of State, acting on the advice of Cabinet, may make regulations to give effect to any provision or for the purpose of this Act, in particular to make any of the following regulations:

- (a) prescribe fees, subject to the approval of the National Revenue Board established under the Public Finance Management Act 2001;
- (b) prescribe additional documents or other procedures required for applications;
- (c) prescribe any quota for citizenship to be granted for the purpose of this Act;
- (d) prescribe any matter required to be prescribed under this Act.

(2) Any prescribed fee payable under this Act is non-refundable.

(3) The Minister may, by Order in the Savali, amend the Schedule.

25. Consequential amendments-(1) For section 6 of the Passports Act 2008, after subsection (2) insert:

“(3) This section and section 7 are subject to section 18(1)(a) of the Citizenship Investment Act 2014.”.

(2) For section 8 of the Citizenship Act 2004, after subsection (2), insert:

“(3) For the purposes of the Citizenship Investment Act 2014, the Minister may, on application, grant citizenship by permanent residence to an investor (including any family member) who:

- (a) has continuously held a valid permanent resident permit in Samoa for three (3) years from the date the permit was granted; and
- (b) has resided in Samoa as required under section 17(1)(a) of the Citizenship Investment Act 2014; and
- (c) is of good health and character; and
- (d) understands the responsibilities and privileges of being a citizen of Samoa; and
- (e) has paid the required fee under this Act; and
- (f) has complied with any other prescribed requirements.

(4) When determining an application under subsection (3), the Minister must also take into account the report of the Citizenship Investment Committee (established under the Citizenship Investment Act 2014) required under section 17(2) of that Act.”.

(3) For section 14 of the Immigration Act 2004, after subsection (3) insert:

“(4) As an exception to subsections (2) and (3), the Minister may grant a permanent resident permit for three (3) years to an investor (including any family member) whose application has been granted under section 13(a) of the Citizenship Investment Act 2014.”.

SCHEDULE

(section 5)

QUALIFYING INVESTMENT

The following investment areas are qualifying investments for the purpose of this Act:

- (a) leasing and developing of government lands, including purchasing and developing of any prescribed land;
 - (b) processing or manufacturing of agricultural produce;
 - (c) processing or manufacturing of fishery products;
 - (d) tourism;
 - (e) information or communication technology;
 - (f) electricity generation through bio-fuel, solar, water or wind;
 - (g) investment in a government development fund for the purposes of national development established by an enactment or prescribed by regulations under this Act or investment in a prescribed charitable trust;
 - (h) any services other than any services listed in the Reserved List under the Foreign Investment Act 2000.
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