

## Doing Business in Samoa

Starting a business requires sound professional advice. Clarke Ey Lawyers have advised many foreign investors who have established new commercial ventures in Samoa. We also have strong professional relationships with a number of public accountants and other advisers in Samoa who we work with to assist investors.

### Introduction to Samoa

The Independent State of Samoa is a politically stable 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.

Samoa is close to the developed country markets of Australia and New Zealand. 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's economy is based on agriculture, tourism, external remittances and fisheries. It has been held up as an example in the Pacific region for its public sector and economic reforms and its medium term economic prospects. Samoa's transport infrastructure is well-developed (including air and shipping services). Its telecommunications infrastructure has international connectivity via a submarine fibre cable 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 47-member Legislative Assembly are held every 5 years with the next election scheduled for 2016.

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. All businesses with any foreign ownership require foreign investment approval. The approval process is administered by the Industry Development and Investment Promotion Division of the Ministry of Commerce Industry and Labour (MCIL) – see [www.mcil.gov.ws](http://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

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can be conducted by foreign owned or part owned businesses. 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. The Government also offers tax incentives to exporters and tourism developers through a concession scheme. Income tax exemptions and tax credits are also available for tourism developments.

## **Onshore business structures**

Samoan law recognizes the various business structures utilized in the common law world: sole traders, partnerships, limited liability companies, joint ventures and trusts (including unit trusts). These structures are regulated by legislation including the Companies Act 2001, Partnership Act 1975, Trustee Act 1975 and Unit Trusts Act 2008. Such structures are available for onshore businesses. 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, registered office etc. 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.

Samoa’s new Personal Property Securities Act 2013 has yet to come into effect but will introduce an electronic registration scheme for security interests in personal property, similar to those in Australia and New Zealand.

Businesses operating in Samoa also require a business licence which is renewed annually.

## **Offshore business structures**

In addition to onshore business structures, Samoa offers offshore business vehicles for international 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 offshore jurisdiction is administered by the Samoa International Finance Authority – [www.sifa.ws](http://www.sifa.ws)

## **Competition**

The Ministry of Commerce, Industry and Labour is responsible for competition regulation in Samoa. The statutory competition regimes are contained in the Fair Trading Act 1998 (modeled on Australian trade practices legislation) and the Consumer Information Act 1989. The legislation provides for consumer protection, regulation of restrictive trade practices, certain consumer guarantees and labelling and advertising.

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

## **Buying or dealing in land**

Land ownership and dealings are governed by the Land Titles Registration Act 2008. This modern legislation introduces indefeasible title for freehold and public land, using the Torrens Title system, similar to Australia and New Zealand. 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). Customary land may be leased, 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 new 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 \$20,000 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

## **Capital gains tax**

Capital gains tax is levied at 27% on profits arising from the disposal of capital assets sold within 3 years of the date of acquisition.

## **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 clusters – 0%, 5%, 8% and 20%. Excise duty is also imposed on alcohol, soft drinks, tobacco products and certain motor vehicles.

## **PAYE**

Employers must deduct Pay As You Earn 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 does not have any double taxation treaties in place. However, a Double Taxation Agreement between Samoa and New Zealand is currently being developed.

Samoa has signed Tax Information Exchange Agreements with Australia, New Zealand and a number of European 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.

## **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](http://www.cbs.gov.ws)

## **Employment**

Employment law is governed largely by the Labour and Employment Act 1972 which provides minimum employment conditions. Statutory leave entitlements are set at 10 days annual leave and 10 days sick leave per annum. The minimum wage is set at WST\$2.00 (USD 0.86 as at May 2013) per hour.

The new Labour and Employment Relations Act 2013 is scheduled to come into force in early 2014. Key changes that will be introduced by this law include mandated maternity and paternity leave and clarified termination procedures and entitlements.

Minimum occupational health and safety requirements are set out by the Occupational Safety and Health Act 2002. This Act contains 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 2% levy (1% from the employer, 1% recoverable from the employee) to the fund each month.

The Samoa National Provident Fund is a statutory superannuation fund. Employers are required to pay a 10% levy (5% from the employer, 5% recoverable from the employee) to the fund each month.

This information is current as at 1 June 2013.

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