Exhibit 3:

Foreign Investment Act (No. 3) 2000, as amended

SAMOA

Arrangement of Provisions

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Schedule

2000, No. 3

AN ACT to promote foreign investment and to regulate such investment by guaranteeing the rights of citizens to participate in the economy of Samoa. *[15th June 2000]*

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

1. Short title and commencement-(1) This Act may be cited as the Foreign Investment Act 2000.

(2) This Act shall come into force on the date that it is assented to by the Head of State.

2. Interpretation-(1) In this Act, unless the contrary intention appears:

"Business" or "Business or economic activity" has the same meaning as in the Business Licences Act 1998:

"Certificate" means a Foreign Investment Registration certificate issued under section 8:

"Citizen" means a person who is a citizen of Samoa by virtue of the Citizenship Act 1972:

"Department" means the Department of Trade, Commerce and Industry:

"Minister" means the Minister responsible for Trade, Commerce and Industry:

"Non-citizen" means any person who is not a citizen:

"Prohibited List" means the list of business or economic activities in the Schedule to the Business Licences Act 1998:

"Register" means the register maintained under section 10:

"Reserved List" means the list of business or economic activities in the Schedule to this Act:

"Restricted List" means the business of economic activities, and the conditions that are applicable to them, prescribed under section 4:

"Secretary" means the Secretary of the Department.

(2) For the purposes of this Act, "foreign investment" is the involvement of any non-citizen, or any company in which a non-citizen holds a shareholding, in any business or economic activity in Samoa for which a business licence is required by the Business Licences Act 1998.

(3) Notwithstanding subsection (2), any business in Samoa which is owned entirely by a citizen or citizens, but which operates under a franchise agreement with a non-citizen who is not resident in Samoa, shall not be regarded as "foreign investment" for the purposes of this Act.

PROVIDED THAT the Minister may deem such a business to be "foreign investment" if he considers that the franchise agreement was entered into for the purpose of defeating the application of this Act.

(4) The lending of money by a non-citizen to a business owned and operated by a citizen, such loan to be repaid at a rate of interest rather than on the basis of a share of the business profits, shall not be regarded as "foreign investment" for the purposes of this Act.

3. Reserved List-(1) The business or economic activities listed in the Schedule shall be reserved for citizens of Samoa exclusively, and no approval may be given under this Act, or any other law, for a non-citizen to own or participate in any business or venture that includes any of the activities in the Reserved List.

(2) Nothing in subsection (1) shall prevent a non-citizen from being employed in such a business provided that he holds the right to employment under the relevant laws in Samoa.

(3) Regulations may clarify any of the activities referred to in the Reserved List by the inclusion of further description or detail, which shall be deemed to form part of the Schedule.

4. Restricted List-(1) Regulations may prescribe business and economic activities which may be undertaken by non-citizens only if they meet certain prescribed conditions, which may require any or all of the following -

(a) That there be a limit to the extent of foreign equity in such a venture by the requirement of mandatory joint venture with a citizen or citizens;

(b) That there be a restriction on the amount of investments, set either as a minimum or a maximum level;

(c) That specified citizen employment targets be met;

(d) That the investment capital required for the business or economic activity be sourced from overseas, to any extent.

(2) The conditions prescribed under subsection (1)(a) shall be set as a percentage of equity in the business which is to be held by citizens of Samoa, but nothing shall prevent the making of a Regulation that applies to a specific business venture.

(3) The conditions prescribed under subsection (1)(b), (c) and (d) shall permit the Minister to set the levels and targets to apply to any specific business venture, after consulting with the Secretary.

5. Activities not otherwise restricted – Subject to this Act and any other law, any non-citizen may own or participate in any business or economic activity that is not -

(a) Listed in the Schedule; or
(b) Prescribed under section 4; or
(c) Prohibited under the Business Licences Act 1998.

6. Foreign Investment Registration-(1) Every foreign investment in Samoa, whether established before or after the commencement of this Act, shall be required to hold a Foreign Investment Registration certificate issued under this Act.

(2) The certificate shall be in the prescribed form.

7. Functions of the Secretary – In relation to the registration of foreign investment in Samoa, the Secretary shall be responsible for -

(a) The coordination of the -
    (i) Reserved List; and
    (ii) Restricted List; and
(b) The receipt and processing of applications for Foreign Investment Registration; and
(c) The issuing of certificates; and
(d) The monitoring of foreign investment in Samoa.

8. Receipt and Approval of Applications for Foreign Investment Registration-(1) Upon receipt of an application for registration under this Act, in the prescribed form, the Secretary shall consider the proposed business or economic activities to be undertaken, and -

(a) Issue within the prescribed time, a certificate if the application relates to business or economic activities that -

(i) are not included in the Prohibited, Reserved or Restricted Lists; or

(ii) are included in the Restricted List, but which meet the conditions applicable to the proposed business; or

(b) Advise the applicant that the application has been rejected on the grounds that the business or economic activities -

(i) are included in the Prohibited, Reserved or Restricted Lists; or

(ii) are included in the Restricted List, and that the proposed business fails to meet the prescribed conditions.

(2) A certificate issued under subsection (1)(a)(ii) shall have endorsed on it a list of the prescribed conditions.

(3) In the event that the Secretary is unable to determine whether a proposed business will include a business or economic activity that is included in the Prohibited, Reserved or Restricted Lists, he shall refer the matter to the Minister, whose determination in this respect shall bind the Secretary.

(4) Where a matter has been referred to the Minister under subsection (3) and any issue regarding the matter relates to the possible application of the Prohibited List, the Minister shall consult with the Commissioner for Inland Revenue before making his determination.

(5) The Secretary may delegate to an officer of the Department his powers under this section.

9. Duration of certificates – A certificate issued under section 8 shall be valid for the duration of the business enterprise to which it relates, unless otherwise terminated under this Act or by operation of any other relevant law, but shall lapse after the expiration of two years if the Minister is satisfied that by that time the operations of the business have not commenced.

10. Register of Foreign Investment – A register of applications made and certificates granted under this Act shall be kept by the Secretary.

11. Reports by Foreign Investors – It shall be a condition of every registration made under this Act that the business provide a report each year to the Secretary, not later than 6 months after the end of the financial year to which the report relates.

12. Cancellation of certificates – A certificate issued under this Act may be cancelled by the Secretary if –

(a) Any information given in the application for the certification was incorrect so as to create a false impression as to the ownership of the business or the nature of its activities; or

(b) The business carries on any activity that is included in the Prohibited List or Restricted List; or

(c) The business breaches any prescribed condition applicable to it; or

(d) The Secretary is satisfied that any participating citizen in the business is not being accorded the full rights as part-owner or equity-holder in the venture as purported in the application for a certificate or as required by any prescribed condition applicable to it.

13. Rights of Appeal-(1) Any applicant whose application for a certificate has been rejected under section 8(b) may appeal in writing to the Minister against that decision and if the Minister is satisfied that no proposed activity is included on the Prohibited List or Reserved List, or that the prescribed conditions applicable to the activities will be complied with, he may direct that the certificate be granted and registration effected.

(2) A holder of a certificate that has been cancelled under section 12 may appeal to the Supreme Court.

14. Offences and Penalties-(1) It shall be an offence for -

(a) Any non-citizen; or

(b) Any company having a shareholder who is a non-citizen,

to engage in any business or economic activity in Samoa,

(c) Which is specified in the Prohibited List or the Reserved List; or

(d) Which is specified in the Restricted List and in respect of which the prescribed conditions have not, at any time, been met; or

(e) Which is required by this Act to be registered but for which no certificate has been issued under this Act.

(2) Upon conviction of any offence under subsection (1) the Court may impose a fine not exceeding 500 penalty units.

(3) In addition to any other penalty imposed, upon conviction for any offence under subsection (1) the person or company so convicted shall have any certificate issued under this Act cancelled.

15. Investment Guarantees – The provisions of Article 14 of the Constitution shall apply to all foreign investment in Samoa.

16. Settlements of Disputes-(1) The provisions of the Arbitration Act 1976 shall have full effect in relation to disputes that involve foreign investors in Samoa.

(2) Subject to this Act and to any other law in Samoa, the Convention on the Settlement of Investment Disputes signed in Washington on 3rd February 1978 and ratified by Samoa on 25th April 1978, shall have the force of law in Samoa.

17. Transitional Arrangements-(1) Any business to which this Act applies and that is in operation as at the commencement of this Act shall be required to achieve compliance with the provisions of this Act within 12 months of the commencement date.

(2) The Minister may approve an extension of time under subsection (1) for any specific business but such extension shall not exceed a further period of 12 months.

18. Regulations-(1) The Head of State, acting on the advice of Cabinet, may from time to time make all such regulations as are required to be made under this Act or as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting this power, regulations may be made under this section for all or any of the following purposes -

(a) The inclusion, deletion or clarification of any business or economic activity in the Schedule;

(b) The types of business or economic activities to be included on the Restricted Lists and the conditions to attach to them;

(c) The form of the certificate and any fees to be paid in relation to applications for or grants of certificates;

(d) The time in which certificates must be issued;

(e) The form of the register and the matters to be included in it;

(f) Fees for inspection of the register;

(g) The form of reports to be submitted by foreign investors and the particulars to be included in them;

(h) Procedures for applying for amendment to certificates and entries in the register and the circumstances in which such applications may or must be made.

SCHEDULE

(section 3(1))

RESERVED LIST

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

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