



TERMS OF REFERENCE

Activity Title:	Review of the Reserved and Restricted Lists of the Foreign Investment Act (FIA) 2000
Estimated Duration:	August - October 2024 (25 working days within 12 weeks)
Estimated No. of Days:	25 working days
Activity No. & Budget:	Act 152, AUD \$30,000 (inclusive of travel and project related expenses)
Location:	Apia, Samoa
Estimated Start Date:	August 2024
Reporting to:	MCIL (Ms Fiu Jacinta Matulino -Assistant CEO / Samoa Investment Component Lead) PPIU (Olivia Phongkham — Investment Adviser)

I. BACKGROUND

The Pacific Agreement on Closer Economic Relations (PACER) Plus (the **Agreement**) is a landmark trade and development Agreement that was signed in 2017 by the following countries: Australia, Cook Islands, Kiribati, Nauru, New Zealand, Niue, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. The Agreement covers goods, services, and investment. It aims to lower barriers to trade, provide greater certainty for businesses, raise living standards, create jobs, and increase exports across the Pacific. PACER Plus entered into force on 13 December 2020. Ten (10) Parties have now ratified the Agreement: Australia, Cook Islands, Kiribati, New Zealand, Niue, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.

PACER Plus aims to increase inclusive and sustainable investment between and among Pacific Countries, Australia and New Zealand. Supporting Parties to create an enabling environment for improved foreign direct investment through development and reform of inclusive policy and legislation is a key component of the Development and Economic Cooperation Work Programme, delivered by the PACER Plus Implementation Unit.

The Government of Samoa is committed to create an investment climate with effective and efficient regulation conducive to domestic and foreign investment that generates positive effects for the domestic economy. Aligned to the “Transforming Samoa to a higher growth path” vision of the Samoa 2040, and the Pathway for the Development of Samoa 2021/2022 — 2025/2026 (under Key Outcome 2 “Diversified and Sustainable Economy”), the Ministry of Commerce, Industry and Labour (MCIL) will lead the review of key legislation and regulation relevant to delivery investment outcomes in these strategic documents.

The Industry Development and Investment Promotion Division (IDIPD) of MCIL has been tasked with coordination and management of a range of legislative review initiatives, where the Foreign Investment Act (‘Act’) 2000 has been identified that requires further assessment and review. In particular, this assignment will focus only on Schedule 1 and Schedule 2 of the Act containing the Reserved and



Restricted Lists. This review will assist the Government of Samoa to decide whether the Lists are serving their intended purposes and whether these are still valid.

II. OBJECTIVE & SCOPE

The primary objective of this assignment is to conduct a comprehensive review of the business activities on both the Reserved and Restricted Lists and the criteria for removing and adding an economic activity to these lists.

To achieve the objective, technical assistance is required to:

1. Undertake a review of Samoa's foreign investment legislation and those of relevant countries for comparative benchmarking, economic and legal analysis.
2. Conduct consultations and subject to findings, provide drafting instructions for amendments to the legislation (Act and its Regulations), including recommendations for improvement of the process and criteria of adding to and removing a business activity from the lists including how often these lists are to be reviewed, as well as any new legislative actions required to meet strategic objectives. This should take into account cultural context, governance approaches and the considerable public interest in these matters.
3. Set out the implications of the proposed policy and legislative changes for subsidiary regulations, clearly articulating risks and sensitive matters for consideration by key stakeholders.
4. Consider the gender equality, disability and social inclusion (GEDSI) implications of proposed recommendations and how they may impact or improve the inclusiveness of outcomes.
5. Ensure the recommendations maintain Government of Samoa commitments under international and regional trade agreements including PACER Plus.

III. DELIVERABLES

The Consultant will deliver the following outputs, as indicated in Section IV:

1. A short Inception Report — including:
 - (i) a work plan including a consultation plan of key Samoa stakeholders, dates for deliverables.
 - (ii) a list of any secondary data to be gathered or identified, and
 - (iii) highlight potential constraints to the assignment with proposed mitigation measures.
2. Draft Report including Consultation Findings — following meetings with key Samoa stakeholders, that identifies progress towards objectives of the project and the scope required in Section II. The consultant is to present a draft report and discuss the structure of the final deliverable with the PPIU and MCIL.
3. Presentation and Final Report — includes resolutions to address comments and concerns from the consultation findings report and provide recommendations that meet objectives outlined in Section II.



All outputs shall be provided in relevant Microsoft Office formats or, in the format agreed with the PPIU.

IV. TIME AND PAYMENT SCHEDULES

The Activity shall be expected to be completed within a maximum of 25 days according to the indicated time frames below. Exact dates of beginning and completion stages as well as scope of work may be amended in discussion with the PPIU.

Payments will be made as provided in the payment schedule below, upon the completion and approval of each deliverable.

Nr.	Deliverables	Indicative Time Frame (delivered by)	Payment Schedule
1.	Inception Report submitted	28 th August 2024	50%
3.	Presentation and Final Report delivered and approved	30 th September 2024	50%

The days are based on working days (Monday – Friday, 9am – 5pm).

All project related travel requires prior approval from the Activity Supervisor. Expenses will be reimbursed to consultant(s) according to policies and procedures detailed in the PPIU Operations Manual.

V. REPORTING:

1. The Activity will be supervised by the Activity/Component Lead and will hold responsibility for guiding progress and technical advice on delivering the activity.
2. The Consultant is required to report to the Activity/Component Lead who will ensure that the deliverables are submitted according to the indicated timeframes and quality standards.
3. Regular discussions with the PPIU and MCIL will also be carried out during the consultancy period to monitor progress and constraints, support required and proposed solutions.

VI. QUALIFICATIONS, SKILLS AND EXPERIENCE REQUIRED OF CONSULTANT(S)

Preference will be given to Pacific-based consultants who possess the following qualifications, skills and experience, and personal specifications:

1. **Qualifications:**
 - Post-graduate qualifications in Public Administration, Economics, Commerce, International Business, International Trade, Law, Social Sciences or in any other relevant area.
2. **Skills & Experience:**
 - Advanced experience (10+ years) in undertaking legislative review and/or assessment of public policy, providing recommendations in a sensitive manner.
 - Thematic expertise working in investment, foreign policy, international trade or relevant area.
 - More than 10 years' experience in working within a cross-cultural context within the Pacific, with experience in legislative environment within Samoa
 - Excellent command of English (oral and written).



PACER Plus

IMPLEMENTATION UNIT

- Ability to work independently under a well-defined consultancy framework.
 - Attention to detail, ability to work in teams, and under tight deadlines.
3. Personal Specifications
- Excellent command of English (oral and written)
 - Ability to work independently and as part of a team under tight deadlines.