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INVESTMENT FOR GROWTH:  
A REVIEW OF FOREIGN DIRECT  
INVESTMENT FRAMEWORKS  
IN THE PACIFIC

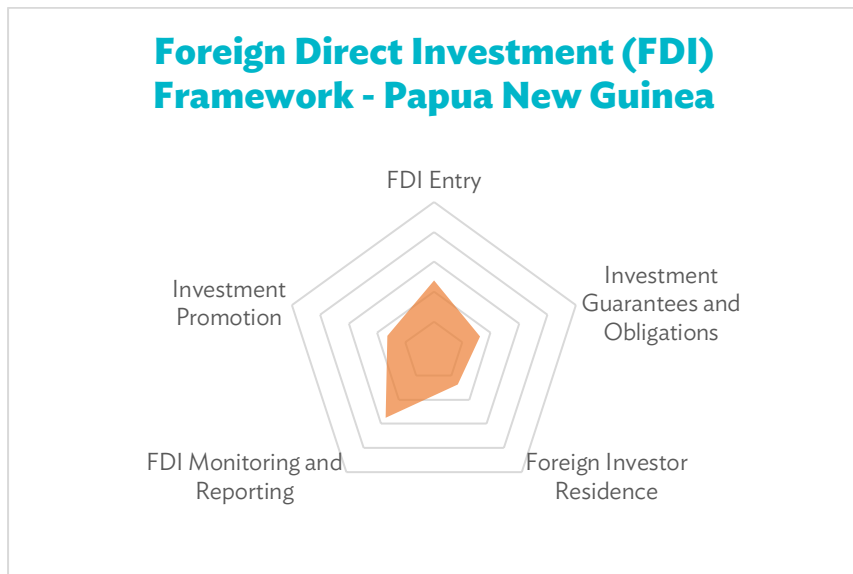
# COUNTRY ASSESSMENT MATRICES

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## Country Assessment Matrix: Papua New Guinea



Factor	Alignment
Foreign Direct Investment (FDI) Entry	<b>WEAK</b>
Investment Guarantees and Obligations	<b>WEAK</b>
Foreign Investor Residence	<b>WEAK</b>
FDI Monitoring and Reporting	<b>MODERATE</b>
Investment Promotion	<b>WEAK</b>

## 1. Foreign Direct Investment Entry

#	Scoring Criteria	Max	Score	Assessment
<b>1. FDI Screening</b>				
1.1	General screening:	5.00	0.00	
(a)	FDI is not separately screened and foreign investors are required to comply with business registration requirements like a citizen-owned business; or	3.50	0.00	<ul style="list-style-type: none"> <li>Section 25 of the Investment Promotion (IP) Act prohibits foreign enterprises without a valid exception to carry on a business without a certificate issued by the Investment Promotion Authority (IPA).</li> <li>Subsequent to receiving foreign investment certification, a foreign investor must obtain other relevant approvals including business licensing, business name registration (if necessary), registration with the Internal Revenue Commission, registration as an employer with a superannuation fund, etc.</li> </ul>
(b)	additional FDI registration is required:	1.75	0.50	
	relevant processes and assessment criteria are up to date, outlined in detail, and made readily accessible to investors; and	0.25	0.00	<ul style="list-style-type: none"> <li>Comprehensive, up-to-date information on FDI assessment processes is not currently provided by IPA.</li> </ul>
	registration applies to investments with any level of direct foreign ownership; and	0.25	0.00	<ul style="list-style-type: none"> <li>The IP Act does not require all levels of foreign ownership to be approved. Section 32 provides for certain exceptions, including minor changes in shareholding an investment on stock exchanges. Further “national enterprises” (defined in Section 3 as an enterprise of which more than 50% is directly or indirectly owned by a citizen) do not need certification. This enables minority foreign ownership without certification.</li> </ul>
	registration criteria are objective and limited to ensuring that proposed investments are consistent with predetermined reserved/restricted lists and the investor(s) is not breaching disqualification criteria; and	0.25	0.00	<ul style="list-style-type: none"> <li>Section 36D(1) of the IP Act places duties on the IP Board to determine applications in reference to a mixture of objective and subjective criteria. Specifically, the Board is required to: <ul style="list-style-type: none"> <li>Verify to its satisfaction the correctness of any statement made in the application or any supporting documentation.</li> <li>Review the merits of the application in order to ascertain whether the proposed activity is likely to achieve all or any of the purposes of the IP Act</li> <li>Where applicable, review the merits of the application to verify to its satisfaction the ability of the applicant to finance, establish and operate the enterprise in the proposed activity</li> <li>Review the merits of the applicant and any enterprise who is, or is proposed to be, an owner, officer, partner or is otherwise associated with the applicant.</li> </ul> </li> </ul>
	application process requires information limited to investor biographical information; business name; contact details; description of investment and business information; and a brief business plan; and	0.25	0.25	<ul style="list-style-type: none"> <li>The IPA Online Registry System requires the following information to be provided: <ul style="list-style-type: none"> <li>General details: <ul style="list-style-type: none"> <li>Type of enterprise.</li> <li>Contact details.</li> </ul> </li> <li>Shareholding details (for companies), including nationality.</li> <li>Bundle allocations.</li> <li>Business activity type and details.</li> <li>Operating locations (including uploading copy of lease, title, contract, and licence of operating locations).</li> <li>Employee details: <ul style="list-style-type: none"> <li>PNG citizens employed full-time.</li> </ul> </li> </ul> </li> </ul>

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#	Scoring Criteria	Max	Score	Assessment
	<p>there is a legal obligation for the regulator to keep information disclosed in the application process confidential; and</p> <p>there is a statutory requirement to be completed within 5 working days; and</p> <p>approval is open-ended and only needs to be varied for changes in business name, ownership, or investment activities.</p>	0.25	0.00	<ul style="list-style-type: none"> <li>▪ PNG citizens employed part-time.</li> <li>▪ Foreign citizens employed full-time.</li> <li>▪ Foreign citizens employed part-time.</li> <li>○ Investment information: <ul style="list-style-type: none"> <li>▪ Proposed investment by foreign investor(s).</li> <li>▪ Proposed investment by citizen investor(s).</li> <li>▪ Projected budget inflow for first year.</li> <li>▪ Proposed budget outflows for first year.</li> <li>▪ Interest of applicant in contacting other potential business parties.</li> </ul> </li> <li>○ Document uploads: <ul style="list-style-type: none"> <li>▪ Passport.</li> <li>▪ Copy of CV.</li> <li>▪ Copy of incorporation certificate.</li> <li>▪ Copy of latest balance sheet of shareholders/owners.</li> <li>▪ Copy of budget and cash flow projections for first year.</li> <li>▪ Partnership agreement.</li> </ul> </li> <li>○ List of directorships held in previous 5 years.</li> <li>○ Declaration.</li> </ul> <ul style="list-style-type: none"> <li>• The IP Act does not place a positive obligation for information disclosed in the application stage to be kept confidential.</li> </ul>
	<p>there is a statutory requirement to be completed within 5 working days; and</p>	0.25	0.00	<ul style="list-style-type: none"> <li>• Section 36D(3) of the IP Act requires written notice of the grant or refusal of an application be given to the applicant within 35 working days of the submission of a complete and correct application.</li> </ul>
	<p>approval is open-ended and only needs to be varied for changes in business name, ownership, or investment activities.</p>	0.25	0.25	<ul style="list-style-type: none"> <li>• Section 32 of the IP Act provides that a change in the ownership, shareholding, or beneficial ownership or control of a foreign enterprise (excluding traded companies) must apply for a certificate under Section 28. There are exceptions for relatively minor changes in ownership.</li> <li>• Section 33 of the IP Act requires variation applications for changes in activity, location of carrying on business in an activity, or a change in any prescribed condition of a certificate.</li> </ul>
1.2	Complex screening used in a few strategic areas:	1.50	1.50	
(a)	no; or	1.50	1.50	<ul style="list-style-type: none"> <li>• Additional FDI screening does not occur.</li> </ul>
(b)	yes:			
	uses transparent procedures and clearly defined timelines; or	1.00	0.00	
	without using transparent procedures and clearly defined timeframes	0.25	0.00	
<b>2. Investment law general restrictions</b>				
2.1	General minimum investment requirement not imposed.	0.25	0.25	<ul style="list-style-type: none"> <li>• The IP Act does not impose a general minimum investment requirement on FDI.</li> </ul>
2.2	General foreign equity restrictions not imposed.	0.25	0.25	<ul style="list-style-type: none"> <li>• The IP Act does not impose a general foreign equity restriction on FDI.</li> <li>• The PNG government does have the capacity in some sectors to require equity participation in mining and oil and gas projects under the Mining Act 1992 and the Oil and Gas Act 1998.</li> </ul>

#	Scoring Criteria	Max	Score	Assessment
2.3	General performance requirements not imposed.	0.25	0.25	<ul style="list-style-type: none"> <li>The IP Act does not impose general performance requirements on FDI.</li> </ul>
<b>3. Investment law sector or activity-specific restrictions</b>				
3.1	Negative list approach is used.	1.00	1.00	<ul style="list-style-type: none"> <li>The IP Act uses a negative list approach. The Investment Promotion Regulations (IP Regulations) establish a list of activities from which FDI is excluded.</li> </ul>
3.2	Total number of reserved and restricted activities is:	1.00	0.00	<ul style="list-style-type: none"> <li>PNG reserves 32 business activities for citizen investment under the IP Regulations.</li> </ul>
(a)	5 or fewer; or	1.00	0.00	
(b)	6 – 10; or	0.75	0.00	
(c)	11 – 20; or	0.50	0.00	
(d)	more than 20.	0.00	0.00	
3.3	Reserved and/or restricted sectors are not export-oriented or important inputs into other businesses.	0.50	0.50	<ul style="list-style-type: none"> <li>Reserved activities are generally not export-oriented or important inputs into other businesses.</li> <li>Some activities—such as retail sale through stalls, tucker shops, and markets; commercial fishing in inland and coastal waters; and coffee pulping—could be considered inputs into other businesses. However, these are more generally oriented to the domestic market for consumer purchases.</li> </ul>
<b>4. Consistency in setting sector/activity limitations</b>				
4.1	Market access limitations are not being set in national policy or legislation outside of the investment law.	0.75	0.00	<ul style="list-style-type: none"> <li>Limitations on FDI are not generally being imposed by government agencies outside of those identified in the IP Act.</li> <li>There are ad hoc restrictions that have been developed in isolation by government authorities. These include restricting coffee processing and export licences to citizen enterprises.</li> <li>Foreign investors are not allowed to obtain interests in freehold or customary land; however, they can acquire interests in state leases of alienated land up to a term of 99 years.</li> </ul>
4.2	Market access commitments made in bilateral and multilateral investment agreements are not less restrictive than those in the investment law.	0.25	0.25	<ul style="list-style-type: none"> <li>PNG's bilateral and multilateral market access commitments are no less restrictive than those in the IP Act.</li> <li>PNG is a signatory to the General Agreement of Trade in Services.</li> <li>PNG has notified several limitations on market access under GATS (GATS/SC/118 and GATS/SC/118/Suppl.1). It is noted that many of these limitations are out of date. <ul style="list-style-type: none"> <li>Horizontal: <ul style="list-style-type: none"> <li>Commercial presence: <ul style="list-style-type: none"> <li>Normal government approval and registration is required for all foreign investors by the Department of Finance and Planning. For such approval, the following criteria are, in general, applied: (i) provision of new services; (ii) improvement of productive structure of the economy; (iii) viability of the new project especially with respect to foreign exchange earnings or savings; (iv) implications for employment in Papua New Guinea.</li> </ul> </li> </ul> </li> </ul> </li> </ul>

#	Scoring Criteria	Max	Score	Assessment
				<ul style="list-style-type: none"> <li>▪ Companies incorporated outside Papua New Guinea must register the name of the company with the Investment Promotion Authority.</li> <li>▪ Foreign nationals and foreign-owned companies may not purchase land but may lease from government or land-holding groups through the Department of Lands.</li> <li>▪ Subject to certification by respective authority agencies (e) Financial Services Subject to normal Government regulations including approval from Bank of PNG.</li> </ul> <ul style="list-style-type: none"> <li>○ Natural persons: <ul style="list-style-type: none"> <li>▪ Unbound except for measures affecting the entry and temporary stay of natural persons in the following categories: managers and specialists who possess knowledge that is necessary for the provision of the service. Entry is limited to those of key importance and where employees are unavailable locally. Entry is limited to 3 years initially with any extension subject to Department of Labour and Employment requirements.</li> </ul> </li> <li>○ Sectoral: <ul style="list-style-type: none"> <li>○ Legal Services (CPC 861); Accounting, auditing and bookkeeping services (CPC 862); Architectural Services (CPC 8671); Engineering Services (CPC 8672); Consultancy services related to installation of computer hardware; Management consulting services (CPC 865); Courier Services in respect of documents and parcels excluding letters and postcards (CPC 7512); General construction work for buildings (CPC 512); General construction work for civil engineering (CPC 513); Acceptance of deposits and other repayable funds from the public (CPC 81115 – 81119) ; Lending of all types including inter alia, consumer credit, mortgage credit, factoring and financing of commercial transaction (CPC 8113); Financial leasing (CPC 8112); Guarantees and commitments (CPC 81199); Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following: money market instruments (cheques, bills, certificates of deposits etc) (CPC 81339); foreign exchange (81333); transferable securities (CPC 81321); Hotels and restaurants (including catering) (CPC 641 – 643); Passenger transportation (CPC 7211); Freight transportation (CPC 7212) – natural persons: unbound except as indicated in the horizontal section.</li> <li>○ Digital cellular services (CPC 75213), paging services (CPC 75291), personal communications services (CPC 75213), trunked radio system services (CPC 7523, CPC 75213), mobile data services (CPC 7523): <ul style="list-style-type: none"> <li>▪ Commercial presence –</li> </ul> </li> </ul> </li> </ul> <p>All Telecommunication Services are subjected to a five-year exclusivity (1997-2002) to TELIKOM PNG Ltd. as the monopoly service provider. The issuance of additional operating licenses and</p>



#	Scoring Criteria	Max	Score	Assessment
				<p>their terms and conditions will be considered and announced at least two years prior to the end of the exclusivity period. Telikom PNG Ltd is designated as signatory to the INTELSAT Operating Agreement.</p> <p>Under the Articles of Association and Memorandum of Articles of Telikom PNG Ltd, Telikom PNG Ltd reserves the right to set up subsidiary companies in business ventures on particular services of telecommunications.</p> <p>Natural persons - Unbound except as indicated in the horizontal section.</p>
<b>5. Review of investment law limitations and restrictions</b>				
5.1	The investment law requires review of limitations or restrictions to:	0.75	0.25	
(a)	take place periodically, and include public consultations; and	0.25	0.00	<ul style="list-style-type: none"> <li>The IP Act provides that the IPA Board may review reserved activities as required and make recommendations to the minister. However, there are neither legislative criteria for conducting the review nor minimum periods.</li> <li>The reserved activities list has not been formally reviewed since 2005.</li> </ul>
(b)	be decided using clearly defined principles; and	0.25	0.00	<ul style="list-style-type: none"> <li>The IP Act does not provide for review principles for reviewing the reserved activities list. PNG is planning amendments to the IP Act to improve reviews.</li> </ul>
(c)	provide that an existing foreign investor affected by the introduction of a new limitation or restriction can continue to operate in the activity.	0.25	0.25	<ul style="list-style-type: none"> <li>Section 27(5) of the IP Act provides for grandfathering of certificate holders who are operating in an activity which subsequently becomes reserved.</li> </ul>
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>4.75</b>	<b>WEAK</b>

## 2. Investment Guarantees and Obligations

#	Scoring Criteria	Max	Score	Assessment
<b>1. National treatment</b>				
1.1	Investment law includes a commitment to the principle of national treatment with either no exceptions, or clearly acknowledged exceptions relating to the establishment, expansion, management, operation, and protection of their investments.	1.50	0.00	<ul style="list-style-type: none"> <li>• The IP Act does not specifically guarantee national treatment for foreign investors.</li> <li>• Section 35 of the IP Act provides a limited undertaking of non-discrimination on rates, taxes, rents, charges, dues, duties, tariffs and/or other levies, and related procedures and practices in favor of foreign investors. This limited right is subject to existing laws, and to any agreement between the government and a foreign investor.</li> <li>• PNG does not consistently treat foreign investors the same as domestic investors. Examples include: <ul style="list-style-type: none"> <li>• Purchase of land: foreign investors are not allowed to obtain interests in freehold or customary land; however, they can acquire interests in leases of freehold land and leasehold land up to a term of 99 years: Constitution of Papua New Guinea; Land (Ownership of Freeholds) Act 1976; Land Act 1996.</li> <li>• Government procurement: Section 39 of the National Procurement Act 2018 prohibits discrimination on the basis of a bidder's nationality, except as provided for in the Act. <ul style="list-style-type: none"> <li>○ PNG citizens and citizen enterprises are afforded a margin of preference of 15% for goods and 7% in works or services (Section 47(1)), and 4% for local-foreign partnerships (Section 47(2)).</li> <li>○ Section 48 of the National Procurement Act reserves procurements related to activities that are reserved under the IP Act. Procurements up to various values have different requirements: <ul style="list-style-type: none"> <li>▪ Up to K10 million: Available to public tender only to national companies and citizens with capacity to undertake or provide the goods, works, or services.</li> <li>▪ Between K10 – K30 million: Either a) at least 50% of the procurement value is undertaken by national companies and citizens with capacity to undertake or provide the goods, works, or services; or b) for partnerships in which at least 50% of the partnership is held by national companies and citizens with capacity to undertake or provide the goods, works, or services.</li> <li>▪ Over K30 million: Open tendering.</li> </ul> </li> </ul> </li> </ul> </li> <li>• Coffee licensing: Coffee Industry Corporation has controls on the registration of manufacturers, exporters, and processors of PNG coffee. Processors and exporters of coffee must be citizen businesses and applications from citizen enterprises are favored for manufacturer licenses. See: Coffee Industry Corporation (Statutory Functions and Powers) Act 1991.</li> <li>• PNG is a signatory to GATS. Article XVII requires that “in the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any Member, in respect of all measures affecting the supply of services, treatment no less</li> </ul>

#	Scoring Criteria	Max	Score	Assessment
				<p>favorable than it accords to its own services and service providers.”</p> <ul style="list-style-type: none"> <li>• PNG has notified the following limitations on national treatment in GATS (GATS/SC/118 and GATS/SC/118/Suppl.1) in relation to commercial presence and presence of natural persons:                             <ul style="list-style-type: none"> <li>○ Horizontal:                                     <ul style="list-style-type: none"> <li>▪ Commercial presence: Foreign employees are required to provide on-the-job training to local employees.</li> <li>▪ Natural persons: Unbound except as specified under market access.</li> </ul> </li> <li>○ Sector-specific:                                     <ul style="list-style-type: none"> <li>▪ Legal Services (CPC 861) – natural persons: unbound except as indicated in the horizontal section.</li> <li>▪ Accounting, auditing and bookkeeping services (CPC 862) – natural persons: unbound except as indicated in the horizontal section.</li> <li>▪ Architectural services (CPC 8671) – natural persons: unbound except as indicated in the horizontal section.</li> <li>▪ Engineering services (CPC 8672) – natural persons: unbound except as indicated in the horizontal section.</li> <li>▪ Consultancy services related to the installation of computer hardware – natural persons: unbound except as indicated in the horizontal section.</li> <li>▪ Management consulting services (CPC 865) – natural persons: unbound except as indicated in the horizontal section.</li> <li>▪ Courier services in respect of documents and parcels excluding letters and postcards (CPC 7512) – natural persons: unbound except as indicated in the horizontal section.</li> <li>▪ General construction work for buildings (CPC 512):   <ul style="list-style-type: none"> <li>• Commercial presence – subject to determinations in favour of national companies set by the ministries according to the National Executive Council or authority responsible for providing the Government regulations. This determination is based on K500,000, which is reviewed periodically subject to economic factors which would affect the cost of construction.</li> <li>▪ Natural persons: unbound except as indicated in the horizontal section.</li> </ul> </li> </ul> </li> <li>○ General construction work for civil engineering (CPC 513):                                     <ul style="list-style-type: none"> <li>▪ Commercial presence – subject to determinations in favour of national companies set by the ministries according to the National Executive Council or authority responsible for providing the Government regulations. This determination is based on K500,000, which is reviewed periodically subject to economic factors which</li> </ul> </li> </ul> </li> </ul>

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#	Scoring Criteria	Max	Score	Assessment
				<p>would affect the cost of construction.</p> <ul style="list-style-type: none"> <li>▪ Natural persons: unbound except as indicated in the horizontal section.</li> <li>▪ Acceptance of deposits and other repayable funds from the public (CPC 81115 – 81119) – natural persons: unbound except as indicated in the horizontal section.</li> <li>▪ Lending of all types including inter alia, consumer credit, mortgage credit, factoring and financing of commercial transaction (CPC 8113) – natural persons: unbound except as indicated in the horizontal section.</li> <li>▪ Financial leasing (CPC 8112) – natural persons: unbound except as indicated in the horizontal section.</li> <li>▪ Guarantees and commitments (CPC 81199) – natural persons: unbound except as indicated in the horizontal section.</li> <li>▪ Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following: money market instruments (cheques, bills, certificates of deposits etc) (CPC 81339); foreign exchange (81333); transferable securities (CPC 81321) – natural persons: unbound except as indicated in the horizontal section.</li> <li>▪ Hotels and restaurants (including catering) (CPC 641 – 643) – natural persons: unbound except as indicated in the horizontal section.</li> <li>▪ Passenger transportation (CPC 7211) – natural persons: unbound except as indicated in the horizontal section.</li> <li>▪ Freight transportation (CPC 7212) – natural persons: unbound except as indicated in the horizontal section.</li> <li>▪ Digital cellular services (CPC 75213), paging services (CPC 75291), personal communications services (CPC 75213), trunked radio system services (CPC 7523, CPC 75213), mobile data services (CPC 7523).</li> </ul>
<b>2. Most-Favored-Nation (MFN) treatment</b>				
2.1	Investment law includes a specific commitment to the principle of non-discrimination in terms of nationality.	1.50	0.00	<ul style="list-style-type: none"> <li>• The IP Act does not specifically guarantee MFN treatment.</li> <li>• Section 37(1) does provide that investment guarantees provided by Section 37 of the IP Act shall apply, except where treatment more favorable to the foreign investor is accorded under bilateral or multilateral agreements to which PNG is a party.</li> <li>• MFN clauses are included in all bilateral investment treaties signed by PNG.</li> <li>• PNG is a signatory to GATS. Article II requires PNG to immediately and unconditionally afford to services and service suppliers of any other GATS member no less favourable than it accords to like services and suppliers of any other country.</li> <li>• PNG has not notified any exemptions to MFN treatment under GATS.</li> <li>• There is no indication of investors from any particular country are being discriminated against.</li> </ul>

3. Fair and equitable treatment				
3.1	Investment law includes a commitment of fair and equitable treatment that includes reference to the minimum standard of international law and guarantees investors will not be subject to unreasonable or discriminatory measures and will have equal access to due process of law.	1.50	0.00	<ul style="list-style-type: none"> <li>The IP Act does not specifically guarantee fair and equitable treatment to foreign investors.</li> <li>The PNG Constitution recognizes basic rights, including protection of the law (Section 37) and qualified protection from unjust deprivation of property (excluding land in some circumstances) (Section 53); however, these rights can be modified by law for non-citizens.</li> <li>Section 157 of the PNG Constitution provides for an independent judiciary that has competence to interpret matter of constitutional interpretation. Section 155(3)(e) provides the technical ability for Acts of Parliament to exclude judicial review. However, the National Court maintains an inherent power of review where, in its opinion, there are overriding considerations of public policy in the special circumstances of the particular case (Section 155(6)).</li> <li>While decisions from PNG courts can be slow and difficult to predict, it is generally viewed that the judiciary acts independently and does not have a bias against non-citizens.</li> </ul>
4. Expropriation				
4.1	Investment law includes a commitment ensuring investors will not be subject to direct expropriation or measures with a similar effect, except for a public purpose, in a non-discriminatory way in accordance with laws and procedures, and subject to prompt, adequate, and effective compensation.	1.50	0.00	<ul style="list-style-type: none"> <li>Section 37 of the IP Act has a limited guarantee against expropriation or nationalization of the property of a foreign investor, limiting nationalization or expropriation to circumstances in which it is a) in accordance with law, b) for a public purpose defined by law, and c) in payment of compensation as defined by law.</li> <li>Section 53 of the PNG Constitution provides a qualified right to protection against unjust deprivation of property and compensation on just terms. However, there are explicit exceptions for land and rights can be modified for non-citizens.</li> <li>The PNG government was alleged to have nationalized shares in the PNG Sustainable Development Program in 2013, which operated the Ok Tedi Mine in Western Province; however, arbitration on this matter failed for technical reasons.</li> </ul>
5. Convertibility and repatriation of funds				
5.1	Investment law guarantees free and prompt transfer of funds related to foreign investment in a freely convertible currency.	1.00	1.00	<ul style="list-style-type: none"> <li>Section 37(3) of the IP Act provides a qualified right (subject to taxation and exchange control laws) to: <ul style="list-style-type: none"> <li>remit overseas earnings and capital, and</li> <li>remit amounts necessary to meet payments of principal, interest, and service charges; similar liabilities on foreign loans; and the cost of other foreign obligations, approved by the state.</li> </ul> </li> </ul>
5.2	Host country does not impose any restrictions on the free and prompt transfer of funds, or if it does, these exceptions are identified.	0.50	0.50	<ul style="list-style-type: none"> <li>The ability for investors to transfer funds is subject to the issuance of a tax clearance certificate under certain circumstances under the Central Banking Act 2000 and the Income Tax Act 1959.</li> <li>Tax clearance certificates must be lodged at the Internal Revenue Commission offices in Port Moresby, with a processing time of 5-10 days.</li> <li>Transfers remitted for defined purposes to identified tax havens require a tax clearance certificate, regardless of value.</li> <li>Transfers remitted for defined purposes to other countries require a certificate where the annual value is, or is likely to be, over K500,000.</li> </ul>
6. Dispute settlement				
6.1	The country has ratified (and, where applicable to the country's legal system, domestically enacted) international	1.50	0.75	<ul style="list-style-type: none"> <li>Section 39 of the IP Act references the Investment Disputes Convention Act 1978 which implements the International Convention on the Settlement of Investment Disputes (ICSID).</li> </ul>

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	conventions for settlement of investment disputes:			
(a)	Convention on the Settlement of Investment Disputes between states and nationals of other states (ICSID); and	0.75	0.75	<ul style="list-style-type: none"> <li>• PNG is a signatory to the ICSID Convention, which provides an impartial international forum providing facilities for the resolution of legal disputes between eligible parties through conciliation or arbitration procedures.</li> </ul>
(b)	New York Convention on Recognition and Enforcement of Arbitral Awards.	0.75	0.00	<ul style="list-style-type: none"> <li>• PNG ratified the New York Convention on 17 July 2019. The Convention provides a framework for recognition and enforcement of arbitral awards. However, the New York Convention has not been recognized in domestic law.</li> </ul>
<b>7. Investor behavior</b>				
7.1	Investment law includes a requirement that foreign investors:	1.00	1.00	
(a)	comply with all domestic laws and regulations; and	0.50	0.50	<ul style="list-style-type: none"> <li>• Section 25(3) of the IP Act specifies that having a certificate granted by IPA does not relieve the foreign enterprise from compliance with any other law.</li> <li>• Foreign enterprises are required to comply with all applicable laws, and such compliance is deemed to be a condition of certification.</li> </ul>
(b)	provide periodic statistical reports concerning their operations.	0.50	0.50	<ul style="list-style-type: none"> <li>• Annual reporting is a condition of certification under the IP Act and Regulations. However, the annual reporting requirement lacks a prescribed format, and compliance rates are poor.</li> </ul>
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>3.25</b>	<b>WEAK</b>

### 3. Foreign Investor Residence in Country

#	Scoring Criteria	Max	Score	Assessment
<b>1. Screening approach</b>				
1.1	Country has a temporary residence permit for investors/businesspersons, available to:	2.00	0.00	<ul style="list-style-type: none"> <li>• PNG requires all foreign investors (migrant investors and new/intra-company transferees) to complete a two-step process. This process requires them to obtain (1) a work permit, followed by (2) a working resident visa from the Immigration and Citizenship Authority (ICA).</li> <li>• ICA assumed responsibility for the issuance of work permits in December 2021 under the Employment of Non-Citizens (Amendment) Act 2021.</li> <li>• The Employment of Non-Citizens Act 2007 regulates the issuance of work permits to non-citizens. Work permits are issued for both self-employed non-citizens and non-citizen workers. Section 6 of the Employment of Non-Citizens Act prohibits non-citizen workers from engaging in employment.</li> <li>• The Migration Act 1978 governs the issuance of entrance permits in PNG. Section 3 of the Migration Act prohibits non-citizens from entering PNG without a permit.</li> </ul>
(a)	owners of a registered foreign investment (immigrant investors) without the need to apply for a separate work permit; and	1.00	0.00	
(b)	designated representatives/intra-company transfers of a registered overseas-based investment without the need to apply for a separate work permit.	1.00	0.00	
1.2	If 1.1(a) and/or (b) is met, then the temporary residence permit is:	3.50	0.00	<ul style="list-style-type: none"> <li>• PNG does not meet the requirements of 1.1(a) or 1.1(b).</li> <li>• Minimum investment amounts are not required to be demonstrated for an investor entry permit.</li> <li>• A work permit application requires the following information to be submitted: <ul style="list-style-type: none"> <li>○ Accompanying information: <ul style="list-style-type: none"> <li>▪ Copy of photo page of employee's passport.</li> </ul> </li> </ul> </li> </ul>
(a)	administered solely by the immigration authority and issued without approvals or support from other authorities (excluding FDI entry requirements); and	0.50	0.00	
(b)	issued according to the following decision criteria:	2.00	0.00	
	(i) only checks ensuring that the foreign investment has successfully met FDI entry requirements, the person has a valid passport and passes objective character and health tests, and has a minimum amount of funds for residence; or	<u>2.00</u>	<u>0.00</u>	
	(ii) meets the requirements of (i), plus the enterprise must satisfy a minimum investment threshold; or	<u>1.50</u>	<u>0.00</u>	
	(iii) meets the requirements of (i), plus meet a range of additional,	<u>0.50</u>	<u>0.00</u>	

#	Scoring Criteria	Max	Score	Assessment
	investor-specific requirements; and			<ul style="list-style-type: none"> <li>▪ Copy of updated CV.</li> <li>▪ Copy of job description.</li> <li>▪ Certified evidence of educational qualifications.</li> <li>▪ Copy of employment contract signed by both employee and employer.</li> <li>▪ Employee's right thumb print.</li> <li>▪ Evidence of membership of professional association (where relevant).</li> <li>▪ Evidence of English language proficiency (where relevant).</li> <li>▪ Employer's certificate of incorporation from IPA.</li> <li>▪ Evidence of payment of fee.</li> </ul> <ul style="list-style-type: none"> <li>○ Nature of application – general/volunteer; length of permit.</li> <li>○ Employment agent/company representative details.</li> <li>○ Employer details, including industrial classification; number of PNG citizen employees; number of non-citizen employees.</li> <li>○ Position details.</li> <li>○ Employee details, including employment history, qualifications, and biodata.</li> <li>○ English language proficiency.</li> <li>○ Salary package of employee.</li> </ul> <ul style="list-style-type: none"> <li>• The Migration Act 1978 governs the issuance of entrance permits in PNG.</li> <li>• There is limited guidance on applying for working resident entrance permits available online. Applications must be submitted in paper form.</li> <li>• In addition to basic biodata and health information, the applicant must submit these items: <ul style="list-style-type: none"> <li>○ Sponsorship letter.</li> <li>○ Receipt for migration service fee.</li> <li>○ Copy of work permit approval letter from DLIR.</li> <li>○ Copy of passport biodata page.</li> <li>○ Copy of IPA certifications.</li> <li>○ Copy of employment contract.</li> <li>○ Copy of IELTS certificate (if applicable).</li> <li>○ Copy of CV.</li> <li>○ Copy of residency entry permit (if applying outside of country of residency).</li> <li>○ Certificate of good health from a registered doctor, a recent chest X-ray, and result of a recent HIV test.</li> </ul> </li> </ul> <p>Statement of good character from local police authority.</p>
(c)	processed in accordance with a statutory processing period of 20 working days or less.	1.00	0.00	<ul style="list-style-type: none"> <li>• PNG does not have a statutory processing time.</li> </ul>
<b>2. Duration of investor residence permit</b>				
2.1	Investor-class temporary residence permits are issued using a two-stage process: (a) initially for a period sufficient to enable the investor to demonstrate they have successfully established themselves, such as 1 year, and then (b) once establishment has been verified, for longer periods.	1.00	0.00	<ul style="list-style-type: none"> <li>• PNG does not have a two-stage investor permit system. Investors must apply for a full work permit and residence permit.</li> </ul>
2.2	Foreign investors associated with established foreign investments may eventually apply for	2.00	2.00	<ul style="list-style-type: none"> <li>• Section 9(2) of the Employment of Non-Citizens Act provides that long-term work permits can be issued from 6 months up to 5 years; however, the general convention is that permits are issued for up to 3 years.</li> </ul>



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#	Scoring Criteria	Max	Score	Assessment
	residence permits with duration of at least 5 years.			<ul style="list-style-type: none"> <li>Section 52 of the Employment of Non-Citizens Act provides ministerially-declared Good Corporate Citizens of Papua New Guinea with special benefits. Regulation 17 of the Employment of Non-Citizens Regulation 2008 specifies that this benefit involves the ability to be granted work permits up to 5 years in duration.</li> <li>Resident permits do not have a maximum term; however, they will generally be issued for the same time as the work permit.</li> <li>CEOs of large companies (more than 250 employees and K10 million annual turnover) and majority owners of resident registered businesses (at least 5 years in operation and a minimum of K2 million annual turnover and/or a net property investment of K10 million) may apply for a permanent residence visa.</li> </ul>
<b>3. Resident permit fee</b>				
3.1	Total temporary residence permit cost for a foreign investor over a 5-year period:	1.50	0.50	<ul style="list-style-type: none"> <li>A general work permit costs USD 285 per year of duration.</li> <li>The fee for a businessperson/investor permit is USD 380.</li> <li>The total potential cost for 5 years of work permit and visa is USD 1,805.</li> <li>The fee for a permanent residence visa is USD 1,700.</li> </ul>
(a)	less than USD 1,000; or	1.50	0.00	
(b)	USD 1,001 – USD 2,000.	0.75	0.75	
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>2.75</b>	<b>WEAK</b>

## 4. Foreign Direct Investment Monitoring and Reporting

#	Scoring Criteria	Max	Score	Assessment
<b>1. Tracking FDI across government</b>				
1.1	Government regulators have the ability to efficiently communicate with one another about foreign investors through the use of unique business identifiers.	1.50	0.00	<ul style="list-style-type: none"> <li>Unique business identifiers are not in use. IPA uses company names or other identification information from IPA databases when conferring with other agencies.</li> </ul>
<b>2. Monitoring and enforcement</b>				
2.1	Transparent criteria define when an FDI is considered established.	0.75	0.00	<ul style="list-style-type: none"> <li>Transparent criteria are not used to define when an investment has been established.</li> <li>Section 29(2)(b)(iv) of the IP Act provides that foreign investment certificates can be issued subject to prescribed terms and conditions. Regulation 71(a) of the IP Regulations can obligate a certificate holder to commence operations by a certain date. In practice, this is generally expressed as commencing operations within 6 months from the date of IPA certification.</li> <li>Regulation 7A(f) of the IP Regulations can obligate a certificate holder to spend a stated amount of money in PNG in respect of the activity within a stated period.</li> </ul>
2.2	Regulators have legislated inspection powers to determine if the conditions of FDI registration/visas are being breached.	0.75	0.75	<p>FDI Registration</p> <ul style="list-style-type: none"> <li>Section 42 of the IP Act provides the IPA with the power to require persons to furnish or produce relevant information, books, and records where a) they are relevant to the exercise or performance of the powers or functions of the IPA or to the achievement of the purposes of the IP Act, or b) it is desirable that the information be given to the IPA or that the information be made available for inspection by the IPA.</li> <li>A person who fails to comply with a notice without reasonable excuse or provides information that is false or misleading in a material particular is guilty of an offence and liable to a penalty not exceeding K10,000, with the default penalty being K1,000.</li> </ul>
				<p>Work permits</p> <ul style="list-style-type: none"> <li>Section 48 of the Employment of Non-Citizens Act 2007 provides authorized officers with extensive powers to investigate suspected offences against the Act.</li> </ul> <p>Entry permits</p> <p>Section 11 of the Migration Act 1978 provides the power for officers to interrogate persons suspected of being in the country unlawfully. While there is not an explicit power to require information, Section 6 of the Immigration and Citizenship Service Act 2010 provides for “full powers to do what is necessary or convenient to be done for in connection with the performance of its functions and achievement of its objectives”.</p>
2.3	Offences and penalties are specified in legislation and:	0.50	0.50	<ul style="list-style-type: none"> <li>Offences are specified in the IP Act, Employment of Non-Citizens Act, and Migration Act, and address legislated requirements.</li> </ul>
(a)	address all legislated requirements; or	0.50	0.50	
(b)	address some but not all legislated requirements.	0.25	0.00	
2.4	Regulators proactively monitor:	2.00	1.00	

#	Scoring Criteria	Max	Score	Assessment
(a)	FDI to ensure establishment requirements are met; and	1.00	0.00	<ul style="list-style-type: none"> <li>• IPA does not comprehensively monitor new FDI to determine whether establishment requirements are met.</li> </ul>
(b)	FDI compliance with registration and residence visa requirements.	1.00	1.00	<ul style="list-style-type: none"> <li>• DLIR and ICA conduct targeted spot checks on work permits and entry permits.</li> </ul>
<b>3. Appeals</b>				
3.1	Foreign investors have the right to appeal the following FDI registration decisions:	1.00	1.00	<ul style="list-style-type: none"> <li>• The IP Act provides for appeals against both denial of applications and revocation of registration.</li> </ul>
(a)	denial of an application; and	0.50	0.50	<ul style="list-style-type: none"> <li>• Section 40(1) of the IP Act enables enterprises to appeal to the minister within 20 working days of receiving notification of: <ul style="list-style-type: none"> <li>○ A refusal of a certificate.</li> <li>○ A certificate has been issued on terms or conditions objectionable to the enterprise.</li> <li>○ Refusal of a variation of a term or condition of a certificate.</li> <li>○ Suspension or cancellation.</li> <li>○ Lack of written notice of grant or refusal of certificate.</li> </ul> </li> <li>• Section 40(2) of the IP Act requires the appeal: <ul style="list-style-type: none"> <li>○ To be in writing.</li> <li>○ Specify the grounds of the appeal.</li> <li>○ Be accompanied by the prescribed fee.</li> </ul> </li> <li>• Section 40(3) requires the minister to obtain a recommendation on the appeal merits within 35 days, and: <ul style="list-style-type: none"> <li>○ Decide whether to grant or refuse the appeal.</li> <li>○ Advise the enterprise and the IPA in writing of the decision and its reasoning.</li> <li>○ Direct the IPA when an appeal is granted.</li> </ul> </li> <li>• The appeal fee is K200. The processing time is up to 55 working days (legislative).</li> </ul>
(b)	revocation of registration.	0.50	0.50	
3.2	Foreign investors have the right to appeal the following residence permit decisions:	1.00	0.50	
(a)	denial of application; and	0.50	0.00	<ul style="list-style-type: none"> <li>• There is no right of appeal from a denial of an entry permit application under the Migration Act.</li> </ul>
(b)	revocation of residence permit.	0.50	0.50	<ul style="list-style-type: none"> <li>• Section 6(2) of the Migration Act only allows appeals where the Minister cancels an entry permit issued for a period of more than 6 months.</li> <li>• Section 19 of the Migration Act provides that in these circumstances: <ul style="list-style-type: none"> <li>○ The minister provides notice to the holder personally or by registered post.</li> <li>○ The person who received the notice can, by written application to the minister, request the review of the cancellation by a Committee of Review. This must be done within 7 days.</li> <li>○ Upon receiving the review application, the minister must inform the Prime Minister who shall, as soon as practicable, appoint a Committee of Review, consisting of three ministers to consider the application.</li> <li>○ The minister submits application and all relevant information (including the reason for cancellation) to the Committee of Review.</li> </ul> </li> </ul>

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#	Scoring Criteria	Max	Score	Assessment
				<ul style="list-style-type: none"> <li>○ The Committee considers application (making any inquiries or investigations it considers necessary) and confirms cancellation or recommends revocation of cancellation.</li> <li>○ The Committee reports recommendations to the minister to take action necessary to implement the recommendations.</li> </ul>
				<ul style="list-style-type: none"> <li>● Section 19 of the Migration Act provides that an act, proposed act, or decision of the minister relating to the grant or cancellation of an entry permit, or to the removal of a person from the country, or any decision of a Committee of Review under Section 6, is not open to review or challenge in any court on any ground.</li> </ul> <p>There is no listed fee for an appeal.</p>
<b>4. Reporting</b>				
4.1	Non-commercially sensitive information about a registered foreign investment's ownership and investment activities is:	1.50	1.50	
(a)	available online; or	1.50	1.50	<ul style="list-style-type: none"> <li>● Section 30 of the IP Act requires the IPA to maintain a Register of Certificates, including: <ul style="list-style-type: none"> <li>○ Every certificate issued.</li> <li>○ Every certificate cancelled.</li> <li>○ Other prescribed particulars.</li> </ul> </li> <li>● The Register is freely available on the IPA website through the Online Registry System.</li> <li>● Information publicly available includes: <ul style="list-style-type: none"> <li>○ Copy or extract of certification.</li> <li>○ General details.</li> <li>○ Business activities.</li> <li>○ Operating locations.</li> </ul> </li> </ul> <p>Employee details.</p>
(b)	only available through requests to the regulator.	0.50	0.00	
4.2	Periodic FDI reports address the following:	1.50	0.25	
(a)	make up of FDI in the country; and	0.25	0.25	<ul style="list-style-type: none"> <li>● Section 18 of the IP Act requires the IPA board to provide the minister with a report on the performance of the IPA for the previous year and for this report to be forwarded to the Speaker for presentation to Parliament.</li> <li>● The IPA annual report provides information concerning: <ul style="list-style-type: none"> <li>○ Proposed investment value by country.</li> <li>○ Proposed investment by province.</li> <li>○ Proposed investment by sector.</li> </ul> </li> </ul>
(b)	extent to which investment actually occurs; and	0.25	0.00	<ul style="list-style-type: none"> <li>● IPA does not report on the extent to which investment actually occurs.</li> </ul>
(c)	actual impacts associated with FDI.	1.00	0.00	<ul style="list-style-type: none"> <li>● IPA does not report on the actual impacts associated with FDI.</li> </ul>
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>5.50</b>	<b>MODERATE</b>

## 5. Investment Promotion

#	Scoring Criteria	Max	Score	Assessment
<b>1. Strategic approach to investment</b>				
1.1	IPI is guided by clear and realistic goals against which the IPI's performance is managed.	2.00	0.00	<ul style="list-style-type: none"> <li>The Government of PNG has not endorsed a set of quantifiable FDI goals.</li> <li>Various government policies—such as Vision 2050, the PNG Development Strategic Plan 2010-2030, Medium-Term Development Plan, and the Small to Medium Enterprise Policy 2016—address foreign investment, but not in quantitative terms.</li> </ul>
1.2	IPI has its services driven by a written, multi-year investment promotion strategy.	2.00	0.00	<ul style="list-style-type: none"> <li>IPA does not have a current investment promotion strategy.</li> </ul>
<b>2. Organizational form</b>				
2.1	IPI is an:	1.50	1.50	<ul style="list-style-type: none"> <li>The IPA is an autonomous agency created by the IP Act. It is responsible to the Minister for Commerce and Industry.</li> </ul>
(a)	autonomous agency; or	1.50	1.50	
(b)	integral unit of a major ministry; or	1.00	0.00	
(c)	sub-unit of a major ministry.	0.50	0.00	
2.2	IPI has access to private sector experience in an oversight or advisory role:	0.50	0.50	<ul style="list-style-type: none"> <li>The IPA board can comprise up to 70% private sector representation.</li> <li>Section 9 of the IP Act establishes the board. The board consists of 10 members:                             <ul style="list-style-type: none"> <li>Ex officio:                                     <ul style="list-style-type: none"> <li>Secretary of Department of Commerce and Industry</li> <li>Secretary of Department of Treasury</li> <li>IPA Managing Director</li> </ul> </li> <li>Non-ex officio:                                     <ul style="list-style-type: none"> <li>Two members nominated by PNG Chamber of Commerce and Industry</li> <li>One member nominated by the Rural Industries Council</li> <li>One member nominated by the Liklik Bisnismanmeri Association</li> <li>One member nominated by the PNG Chamber of Mines and Petroleum</li> </ul> </li> </ul> </li> </ul> <p>Two members appointed by the minister.</p>
(a)	board has at least 40% private sector representation; or	0.50	0.50	
(b)	board has some private sector representation.	0.25	0.00	
<b>3. IPI functions</b>				
3.1	IPI's role is:	1.00	0.00	<ul style="list-style-type: none"> <li>IPA has a dual regulatory and investment promotion role. Section 6 of the IP Act establishes that the functions of the IPA are, in accordance with any directions of the NEC or the minister on development objectives and policies:                             <ul style="list-style-type: none"> <li>To provide information to investors in the country and overseas.</li> <li>To encourage and facilitate investment in the country by assisting investors to obtain all necessary licences, compliances and approvals.</li> </ul> </li> </ul>
(a)	limited solely to providing investment promotion services; or	1.00	0.00	
(b)	broader than investment promotion but does not involve regulatory responsibilities such as FDI	0.50	0.00	

#	Scoring Criteria	Max	Score	Assessment
	monitoring and enforcement.			<ul style="list-style-type: none"> <li>○ To facilitate the introduction of citizens and foreign investors to each other and to activities and investments of mutual benefit.</li> <li>○ To provide a system of certification of a foreign enterprise and to require that a foreign enterprise may only carry-on business if so certified.</li> <li>○ To monitor the activities of foreign enterprises so as to determine whether or not a foreign enterprise is certified and complies with the terms and conditions of its certificate to carry on business in the country.</li> <li>○ To advise the minister on policy issues which relate to this act.</li> <li>○ To maintain a register of foreign investment opportunities.</li> <li>○ To facilitate citizen participation in investment and in the ownership of national and foreign enterprises.</li> <li>○ To carry out such other functions as are given to the authority by this act or by any other law.</li> <li>○ Generally, to do such supplementary, incidental, or consequential acts and things as are necessary or convenient for carrying out its functions.</li> <li>○ The IPA also has regulatory functions under the Companies Act 2014, the Business Names Act 2014, the Business Groups Incorporation Act 1974, Associations Incorporation Act 1966, Personal Property Security Act 2011, and the Trade Marks Act 1978.</li> </ul>
<b>4. IPI activities</b>				
4.1	IPI maintains an investment promotion website with the following up to date information:	1.10	0.30	<ul style="list-style-type: none"> <li>• The IPA hosts a website which provides information on investing in PNG. However, this website is not dedicated to investment promotion.</li> <li>• The IPA has an investment guide available on the IPA website with key information from 2014 which is not up to date. There is proposed technical assistance from the Japanese International Cooperation Agency to update the investment guide.</li> <li>• The IPA released a Business Licensing Information Services booklet in 2019 which covers a range of legislative requirements for doing business in PNG. The booklet is not available online; however, it can be purchased from the IPA for K200.</li> </ul>
(a)	National Investment Policy Statement; and	0.30	0.00	<ul style="list-style-type: none"> <li>• The IPA does not have a current National Investment Policy Statement; however, it is in the process of updating its previous one from 1996.</li> </ul>
(b)	key business start-up and operational requirements; and	0.10	0.10	<ul style="list-style-type: none"> <li>• Key business start-up requirements are available on the IPA website.</li> </ul>
(c)	strengths of the country as an investment destination; and	0.10	0.10	<ul style="list-style-type: none"> <li>• Information on the strengths of the country as an investment destination is available on the IPA website.</li> </ul>
(d)	business cost data; and	0.20	0.00	<ul style="list-style-type: none"> <li>• Business cost data is not available on the IPA website.</li> </ul>
(e)	business conditions within priority sectors and potential areas for investment; and	0.20	0.00	<ul style="list-style-type: none"> <li>• Business condition information is not available on the IPA website.</li> </ul>
(f)	investor testimonials; and	0.10	0.00	<ul style="list-style-type: none"> <li>• Investor testimonials are not available on the IPA website.</li> </ul>
(g)	contact details.	0.10	0.10	<ul style="list-style-type: none"> <li>• Contact details are available on the IPA website.</li> </ul>

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#	Scoring Criteria	Max	Score	Assessment
4.2	IPI provides facilitation services:	0.70	0.50	<ul style="list-style-type: none"> <li>The IPA's services focus on providing information to prospective investors and assisting foreign investor missions to visit areas/businesses in the country. Much of the latter work is done in response to specific requests by certified investors.</li> </ul>
(a)	protocols in place enabling prompt response to investor inquiries; and	0.30	0.30	<ul style="list-style-type: none"> <li>The IPA has protocols in place to respond to investor inquiries, but no system to track investor inquiries or implementation progress. It has not created a formal network of focal points in key government ministries but has established MOUs with several provinces and the Internal Revenue Commission.</li> </ul>
(b)	account managers facilitate investments in priority sectors; and	0.20	0.20	<ul style="list-style-type: none"> <li>IPA assigns officers responsibility for priority economic sectors.</li> </ul>
(c)	proactive support provided to investments in priority sectors.	0.20	0.00	<ul style="list-style-type: none"> <li>Assistance is largely reactive; however, IPA partners with external agencies and attends international trade shows to promote PNG as an investment destination.</li> </ul>
4.3	IPI regularly undertakes advocacy across government to improve the investment climate.	0.30	0.00	<ul style="list-style-type: none"> <li>IPA does not regularly undertake advocacy across government to improve the investment climate. While some coordination has occurred for the development of a new investment policy, this is not being actively pursued.</li> </ul>
<b>5. Streamlined online approvals</b>				
5.1	Investors have the ability to complete investment approvals through electronic systems for:	1.00	0.60	
(a)	foreign investment certification; and	0.20	0.20	<ul style="list-style-type: none"> <li>Foreign investment certification is available online through the IPA website.</li> </ul>
(b)	company registration; and	0.20	0.20	<ul style="list-style-type: none"> <li>Company registration is available online through the IPA website.</li> </ul>
(c)	business names registration (if applicable); and	0.20	0.20	<ul style="list-style-type: none"> <li>Business names is available online through the IPA website.</li> </ul>
(d)	tax registration; and	0.20	0.00	<ul style="list-style-type: none"> <li>Tax registration cannot be completed online with the Internal Revenue Commission. However, tax can be paid online after registration.</li> </ul>
(e)	business licences.	0.20	0.00	<ul style="list-style-type: none"> <li>Business licences, known as "trading licences", are issued by sub-national authorities. Online applications are not available in most provinces, including the National Capital District.</li> </ul>
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>3.30</b>	<b>WEAK</b>

## 6. Reserved Activities

### Investment Promotion (Amendment) Regulation 2005, Schedule 2

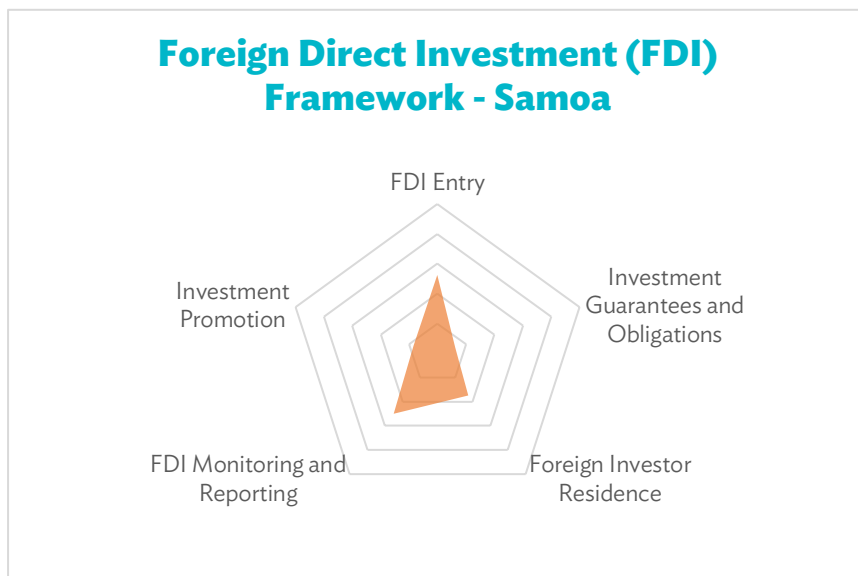
No.	Activity
1	Cultivation and growing of vegetables and other market produce with annual sales of K50,000 or less
2	Farming of animals with annual sales of K50,000 or less
3	Poultry farming with annual sales of K50,000 or less
4	Hunting, trapping, and game propagation, including related service activities
5	Gathering of wild growing forest materials including balata and other rubber like gums; cork; lac, resins and balsams; rattan; vegetable hair and eel grass; acorns and horse-chestnuts; mosses, lichens and cut evergreen trees used for festive occasions; saps; bark; herbs; wild fruits; flowers and plants; leaves; needles; reeds; roots or other wild growing materials
6	Walkabout (mobile) sawmill
7	Hunting or collecting of non-protected fauna, including insects, shells, animal teeth, tusks, feathers, declared sedentary organisms and similar products and living or dead fauna
8	Fishing on a commercial basis in coastal and inland waters. "Coastal" means within three miles off the shoreline
9	Taking of marine or freshwater crustaceans and molluscs. Hunting of aquatic animals such as turtles, sea squirts and other tunicates, sea urchins or other echinoderms and other aquatic invertebrates
10	Gathering of marine materials such as natural pearls, sponges, coral, and algae
11	Alluvial mining
12	Mobile food delivery service
13	Wholesale and retail sale of wild growing forest materials including balata and other rubber-like gums; cork; lac; resins and balsams; rattan; vegetable hair and eel grass; acorns and horse chestnuts; mosses lichens and cut evergreen trees used for festive occasions; saps; barks; herbs; wild fruits; flowers and plants; leaves; needles; reeds; roots or other wild growing materials
14	Retail sale through stalls, tucker shops and markets
15	Wholesale and retail sale of second-hand clothing and footwear
16	Retail sale carried out from a motor vehicle or motorcycle
17	Wholesale and retail sale of handicrafts and artifacts
18	Repair of footwear when not done in combination with manufacture
19	Weaving: this activity includes, but not limited to, weaving of cane products, textiles, baskets, nets, dishes, ropes and bags that are saleable at home, street markets or retail outlets on a fee
20	Bilum Making: Making of string bags (bilums) from traditional bush ropes and cottons taking traditional and contemporary designs that are saleable at home, street market or retail outlet on a fee
21	Knitting: The activity includes knitting of textiles, wearing apparels, cloth, garment, designs, fabrics and decorations that are saleable at home, street market or retail outlet on a fee
22	Art and craft making: All sorts of handicrafts and artistic designs that are saleable at home, street market or retail outlet on a fee
23	Carving: Wood carvings and sculptures on a fee (contract) or assorted carvings that are saleable at home, street market or retail outlet on a fee



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24	Pottery making: All sorts of pottery products including clay pots, cups, mugs, dishes, plates, sculptures and other art forms that are saleable at home, street markets or retail outlet on a fee
25	Painting: All sorts of paintings in any shape, type and form including portrait paintings, screen paintings, sand paintings, oil paintings, saleable at home, street markets or retail outlet on a fee
26	Screen printing: Screen printing of designs including emblems, logos, traditional and contemporary art forms, commemorations and special events on apparels including laplaps, shirts, T-shirts and other garments and textile materials, suited to the event, situation or purpose they relate that are saleable at home, street markets or retail outlet on a fee
27	Sewing: Sewing of garments, textile materials, wearing apparels, cloths and fabrics that are saleable at home, street market or retail outlet on a fee
28	Jewellery making: Making of simple jewellery products including necklaces, earrings, rings, arm bands, primarily from seashells, tasks and beads for sale at home, street markets or retail outlet on a fee
29	Baking: Baking of fresh bakery products including bread loaves, cakes, pies, cookies and scones saleable at home, street market or retail outlet on a fee
30	Coffee pulping: Coffee pulping using manual pulping machines with the beans saleable at buying points or at coffee depots
31	Hunting of crocodiles and processing of skins: Hunting and processing of crocodile skins for sale at established market outlets
32	Operation of Tyre Repair Service: Operation of small tyre repair shops where not done as incidental to the core business of maintenance and repairs

## Country Assessment Matrix: Samoa



Factor	Alignment
Foreign Direct Investment (FDI) Entry	MODERATE
Investment Guarantees and Obligations	WEAK
Foreign Investor Residence	WEAK
FDI Monitoring and Reporting	MODERATE
Investment Promotion	WEAK

## 1. Foreign Direct Investment Entry

#	Scoring Criteria	Max	Score	Assessment
<b>1. FDI Screening</b>				
1.1	General screening:	5.00	0.00	
(a)	FDI is not separately screened and foreign investors are required to comply with business registration requirements like a citizen-owned business; or	3.50	0.0	<ul style="list-style-type: none"> <li>Section 6 of the Foreign Investment Act 2000 (FIA) requires investments with any level of foreign ownership to complete a registration process and obtain a foreign investment certificate. While not explicitly addressed in the FIA, registration enables the certificate holder to proceed with investment implementation and provides them with a set of investment guarantees. Successful registration does not confer any incentives.</li> </ul>
(b)	additional FDI registration is required:	1.75	0.75	
(i)	relevant processes and assessment criteria are up to date, outlined in detail, and made readily accessible to investors; and	0.25	0.00	<ul style="list-style-type: none"> <li>Samoa does not codify detailed information concerning FDI certification applications.</li> <li>The Samoa Trade Portal provides some information regarding FDI certification; however, it does not explain the process in detail.</li> </ul>
(ii)	registration applies to investments with any level of direct foreign ownership; and	0.25	0.25	<ul style="list-style-type: none"> <li>Section 2 of the FIA requires an investment, in any revenue-generating activity, with any level of non-citizen involvement, to complete the foreign investment registration process. There are minor exceptions which include: trustee companies licensed under the Trustee Companies Act, international companies registered under the International Companies Act, international banks licensed under the International Banking Act, citizen-owned businesses in a franchise agreement with a non-citizen who is not a Samoa resident, and short-term consultancies by businesses owned by non-citizens.</li> </ul>
(iii)	registration criteria are objective and limited to ensuring that proposed investments are consistent with predetermined reserved/restricted lists and the investor(s) is not breaching disqualification criteria; and	0.25	0.00	<ul style="list-style-type: none"> <li>Registration decisions are made by the Chief Executive Officer (CEO) of the Ministry of Commerce, Industry and Labour (MCIL) based on submission of a completed application form and supporting documents to the Industry Development and Investment Promotion Division (IDIPD).</li> <li>Section 8(1) of the FIA requires the CEO to assess an applicant's proposed activities against predetermined prohibited, reserved, and restricted lists. Companies must incorporate prior to applying for a foreign investment registration certificate.</li> <li>There are issues that potentially complicate registration: <ul style="list-style-type: none"> <li>In 2019, MCIL began requesting the Samoa Transnational Crime and Financial Intelligence units to conduct due diligence checks on new foreign investments and their owners. The FIA does not include criteria enabling denial of a registration certificate based on potential concerns raised by these checks.</li> <li>Regulation 3 of the Foreign Investment Regulations provides the Minister of Commerce discretion in setting foreign equity, investment and employment levels and training requirements for applications involving restricted activities. These provisions, however, are not being used. In the case of applications involving restricted activities, the CEO makes decisions without referral to the minister (as is the case with all other applications), and applicants are required to comply with conditions identified in the restricted list.</li> </ul> </li> </ul>
(iv)	application process requires information limited to investor biographical information; business name; contact details;	0.25	0.00	<ul style="list-style-type: none"> <li>Regulation 5 of the Foreign Investment Regulations 2005 specifies that applications shall be a form approved by the CEO, and include the following: <ul style="list-style-type: none"> <li>The enterprise or business name.</li> <li>The form of ownership, whether it is a company, partnership, or sole proprietor.</li> <li>The business trading name.</li> <li>Personal information on shareholdings, including a brief background about the shareholders.</li> </ul> </li> </ul>

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#	Scoring Criteria	Max	Score	Assessment
	<p>description of investment and business information; and a brief business plan; and</p> <p>(v) there is a legal obligation for the regulator to keep information disclosed in the application process confidential; and</p> <p>(vi) there is a statutory requirement to be completed within 5 working days; and</p> <p>(vii) approval is open-ended and only needs to be varied for changes in business name, ownership, or investment activities.</p>	<p>0.25</p> <p>0.25</p> <p>0.25</p>	<p>0.25</p> <p>0.25</p> <p>0.00</p>	<ul style="list-style-type: none"> <li>○ The shareholder's contact details including: <ul style="list-style-type: none"> <li>▪ Overseas residence address.</li> <li>▪ Address in Samoa.</li> </ul> </li> <li>○ The enterprise registration number and date of approval issued by the Registrar of Companies.</li> <li>○ The exact location of the proposed place of business or activity and details.</li> <li>○ Submission by each shareholder of the following: <ul style="list-style-type: none"> <li>▪ One recent passport size photo.</li> <li>▪ A certified true copy of the photo page of his or her valid passport.</li> </ul> </li> <li>○ A certified true copy of the certificate of incorporation.</li> <li>○ Confirmation of the source of funds and the total initial working capital for the proposed business or economic activity.</li> <li>○ Any other relevant supporting document required by the Chief Executive Officer.</li> </ul> <ul style="list-style-type: none"> <li>• The application form is available via MCIL's website and is consistent with the requirements specified in Regulations. The form also requires a site map and, in the case of restricted activities, copies of qualifications and membership in professional societies. In addition, applicants must provide projected employment for the first 3 years of operation, as well as the amount and source of capital (share and initial working capital).</li> <li>• The application form does not include a list of sectors/activities from which applicants can select. Applicants provide a description of the activities they intend to undertake, and MCIL staff assigns them a sector/activity.</li> <li>• Section 8A of the FIA requires information provided in an application to be kept confidential and only used for the purposes of the Act.</li> </ul> <ul style="list-style-type: none"> <li>• The statutory timeframe for assessing applications is 5 working days, with the issue of a certificate within 10 working days.</li> <li>• Regulation 5(3) of the Foreign Investment Regulations requires the CEO to issue a receipt to the applicant within 5 days of receiving an application, which must include the date on which the application was received.</li> <li>• Regulation 5(4) provides that the time for the issue of a certificate is 5 working days from the date of registration under Regulation 5(3).</li> <li>• Certificates are not open-ended. Section 9(a) of the FIA provides that certificates are valid for 12 months from the date of the certificate unless otherwise renewed or terminated.</li> </ul>
1.2	Complex screening used in a few strategic areas:	1.50	1.50	
(a)	no; or	1.50	1.50	<ul style="list-style-type: none"> <li>• Samoa does not impose additional FDI screening.</li> </ul>
(b)	yes:			
(i)	uses transparent procedures and clearly defined timelines; or	1.00	0.00	
(ii)	does not use transparent procedures and	0.25	0.00	

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#	Scoring Criteria	Max	Score	Assessment
	clearly defined timeframes.			
<b>2. Investment law general restrictions</b>				
2.1	General minimum investment requirement not imposed.	0.25	0.25	<ul style="list-style-type: none"> <li>No general minimum investment requirement is in force.</li> <li>Prior to 2019, a minimum investment requirement of WST 10,000 (~USD 3,680) was being imposed, as Section 4(3) of the FIA permits the minister to set minimum or maximum investment levels.</li> </ul>
2.2	General foreign equity restrictions not imposed.	0.25	0.25	<ul style="list-style-type: none"> <li>The FIA does not include general foreign equity restrictions.</li> </ul>
2.3	General performance requirements not imposed.	0.25	0.25	<ul style="list-style-type: none"> <li>The FIA does not include general performance requirements.</li> </ul>
<b>3. Investment law sector or activity-specific restrictions</b>				
3.1	Negative list approach is used.	1.00	1.00	<ul style="list-style-type: none"> <li>The FIA uses a negative list approach. It establishes a reserved list of activities from which FDI is excluded (Schedule 1), as well as a restricted list of activities open to FDI if they meet certain conditions (Schedule 2).</li> </ul>
3.2	Total number of reserved and restricted activities is:	1.00	0.00	<ul style="list-style-type: none"> <li>A total of 23 activities are reserved or restricted—14 activities are reserved solely for citizens (9 of which involve retailing products), and 9 activities are open to foreign investment subject to conditions.</li> </ul>
(a)	5 or fewer; or	1.00	0.00	
(b)	6 – 10; or	0.75	0.00	
(c)	11 – 20; or	0.50	0.00	
(D)	more than 20.	0.00	0.00	
3.3	Reserved and/or restricted sectors are not export-oriented or important inputs into other businesses.	0.50	0.00	<ul style="list-style-type: none"> <li>Some restricted activities are export-oriented, such as commercial fishing and the manufacture of nonu and virgin coconut oil. A maximum of 40% equity is set for commercial fishing, while joint ventures (no maximum equity) are required in the latter.</li> <li>Several restricted activities are potentially important inputs into other businesses, such as those regarding site development (i.e., architectural services, professional engineering, and general construction). The restriction on professional engineering and general construction only requires local incorporation, while architectural services are required to form joint ventures.</li> </ul>
<b>4. Consistency in setting sector/activity limitations</b>				
4.1	Market access limitations are not being set in national policy or legislation outside of the investment law.	0.75	0.75	<ul style="list-style-type: none"> <li>Limitations on FDI are not being imposed by government agencies outside of those identified in the FIA.</li> </ul>
4.2	Market access commitments made in bilateral and multilateral investment agreements are not less restrictive than those in the investment law.	0.25	0.25	<ul style="list-style-type: none"> <li>There are minor differences between restricted activities listed in Schedule 2 of the FIA and market access limitations made in Samoa's WTO General Agreement on Trade in Services (GATS) commitments, but they are not inconsistent. The GATS commitments include some bounded limitations that are more restrictive than those imposed under the FIA. This applies to accountants and bookkeepers, which are expected to joint venture with local partners, and hotel and restaurant services, which are to incorporate in Samoa. Neither limitation is included in Schedule 2 of the FIA.</li> <li>Sectors with market access commitments notified under GATS (GATS/SC/147): <ul style="list-style-type: none"> <li>Accounting and Bookkeeping Services only with respect to the following: - Accounting review services (CPC 86212) - Compilation of financial statements services (CPC 86213) - Other accounting service (CPC 86219) - Bookkeeping services, except tax returns (CPC 86220); Architectural services (CPC 8671); Sewage services (CPC 9401); Refuse disposal services (CPC 9402); Sanitation and similar services (CPC 9403); Other (CPC 9404, 9405, 9406); Hotel lodging</li> </ul> </li> </ul>

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#	Scoring Criteria	Max	Score	Assessment
				<p>services (3 and above star hotels only) (CPC 641); Food serving services (CPC 642); Beverage serving services without entertainment (CPC 643)</p> <ul style="list-style-type: none"> <li>▪ Commercial presence – joint venture with local partner required</li> <li>○ Engineering services (CPC 8672); General construction work for buildings (CPC 512) and General construction work for civil engineering (CPC 513) <ul style="list-style-type: none"> <li>▪ Commercial presence – only through incorporation in Samoa</li> </ul> </li> <li>○ Maritime Transport Services (excluding cabotage) (a) Passenger transportation (CPC 7211) (b) Freight transportation (CPC 7212): <ul style="list-style-type: none"> <li>▪ Commercial presence – unbound</li> </ul> </li> </ul> <ul style="list-style-type: none"> <li>• Samoa has ratified PACER Plus, which came into force mid-December 2020. It includes similar market access commitments to the GATS.</li> </ul>
<b>5. Review of investment law limitations and restrictions</b>				
5.1	The investment law requires review of limitations or restrictions to:	0.75	0.25	
(a)	take place periodically, and include public consultations; and	0.25	0.00	<ul style="list-style-type: none"> <li>• Section 3(4) and 4(5) of the FIA includes the capacity to amend the reserved and restricted lists, but there is no statutory requirement that reviews be performed on a periodic basis.</li> <li>• The lists are relatively unchanged from their establishment in 2000.</li> </ul>
(b)	Be decided using clearly defined principles; and	0.25	0.25	<ul style="list-style-type: none"> <li>• Regulation 4 of the Foreign Investment Regulations provides for a statutory process for amending the reserved and restricted activities. It allows for both adding activities and removing existing ones, and specifies criteria for this purpose.</li> <li>• The process operates on a case-by-case basis through individual submissions made by to the CEO of MCIL. Parties wishing to amend the list must provide analyses demonstrating criteria have been met. A Foreign Investment Advisory Committee has discretion in making recommendations to the Minister of Commerce regarding submissions. Cabinet makes final decisions.</li> <li>• While a clearly defined process is in place, its operation has been problematic: <ul style="list-style-type: none"> <li>○ MCIL received submissions from businesses and ministries requesting changes to the reserved lists using the process. Requested additions included: (1) shipping agents, stevedoring, and cartage services; (2) petroleum service stations; (3) produce farming; and (4) superior standard and standard holiday homes and beach fale. There was one request to remove rental vehicles.</li> <li>○ However, MCIL was unable to act on the requests because the parties failed to provide the necessary supporting analyses required by Regulations. This is likely because the parties were responsible for covering the full cost of preparing the analytical work, and the outcome of the process was uncertain.</li> <li>○ MCIL reviewed the wholesaling sector in 2017 using a local consultant. It recommended adding wholesaling of food and drink items to the reserved list, and identified a range of other activities the local business community wished to restrict. None have been incorporated into the lists.</li> </ul> </li> <li>• MCIL requested technical assistance (TA) from the Samoa Governance Support Program to develop more workable procedures for reviewing the lists. This work commenced in early 2020 but was not completed. The TA's inception report noted a desire among some stakeholders to expand the number of activities on the lists, along with a need to incorporate consumer views in the process.</li> </ul>
(c)	provide that an existing foreign investor affected by the introduction of a new limitation or	0.25	0.00	<ul style="list-style-type: none"> <li>• The FIA does not include a grandfathering commitment in the event an activity is added to a list.</li> </ul>

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#	Scoring Criteria	Max	Score	Assessment
	restriction can continue to operate in the activity.			
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>5.25</b>	<b>MODERATE</b>

## 2. Investment Guarantees and Obligations

#	Scoring Criteria	Max	Score	Assessment
<b>1. National treatment</b>				
1.1	Investment law includes a commitment to the principle of national treatment with either no exceptions, or clearly acknowledged exceptions relating to the establishment, expansion, management, operation, and protection of their investments.	1.50	0.00	<ul style="list-style-type: none"> <li>• The FIA does not specifically guarantee national treatment for foreign investors.</li> <li>• Article 15 of the Samoan Constitution provides a commitment that no person will be discriminated against in law, or in executive or administrative action.</li> <li>• Foreigners have restricted access to land, although this is generally well advertised. Restrictions include: <ul style="list-style-type: none"> <li>○ Section 4 of the Alienation of Customary Land Act 1965 enables customary land to be leased for a period of up to 30 years for hotels or industrial purposes, or 20 years for other purposes. Section 3 of the Alienation of Customary Land Act effectively prohibits leases for pastoral or agricultural purposes for foreigners.</li> <li>○ Section 6 of the Alienation of Freehold Title Act 1972 requires Head of State approval for freehold land transactions involving non-resident citizens and overseas corporations.</li> </ul> </li> <li>• Samoa is a signatory to GATS. Article XVII requires that “in the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any Member, in respect of all measures affecting the supply of services, treatment no less favorable than it accords to its own services and service providers.” Samoa has notified the following limitations on national treatment under GATS: <ul style="list-style-type: none"> <li>○ Horizontal: <ul style="list-style-type: none"> <li>▪ Commercial presence—Non-Samoan natural and juridical persons may lease but not own land. Land may be leased for up to 30 years (renewable once) in the case of land leased or licensed for industrial purposes or a hotel, and 20 years (renewable once) in other cases.</li> <li>▪ Movement of natural persons—Foreign service suppliers may be required to provide training to local employees.</li> <li>▪ Unbound except for the measures affecting the entry and temporary stay of natural persons referred to in the market access column.</li> </ul> </li> </ul> </li> <li>• Chapter 7, Article 6 of PACER Plus requires parties to the Agreement in reference to the sectors specified in Annex 7-A to accord to services and service supplies of another party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own services and service suppliers. This is subject to any conditions or qualifications specified in Annex 7-A. In relation to Chapter 7, Samoa has notified the following limitations on national treatment for commercial presence: <ul style="list-style-type: none"> <li>○ Horizontal: <ul style="list-style-type: none"> <li>▪ Non-Samoan natural and juridical persons may lease but not own land. Land may be leased for up to 30 years (renewable once) in the case of land leased or licensed for industrial purposes or a hotel, and 20 years (renewable once) in other cases.</li> <li>▪ Foreign service suppliers may be required to provide training to local employees.</li> </ul> </li> <li>○ Sectoral: <ul style="list-style-type: none"> <li>▪ Unbound for measures involving transport services and international transport (freight and passengers) (CPC 7211 and 7212), excluding cabotage transport.</li> </ul> </li> </ul> </li> <li>• Chapter 9, Article 6 of PACER Plus includes a commitment to according investors and covered investments of investors of any other Party treatment no less favorable than that</li> </ul>



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#	Scoring Criteria	Max	Score	Assessment
				<p>it accords, in like circumstances, to investments of its own investors with respect to the acquisition, establishment, expansion, management, conduct, operation, and sale or other disposition of investments in its territory. In relation to Chapter 9, Samoa has notified the following limitations on national treatment:</p> <ul style="list-style-type: none"> <li>○ Horizontal: <ul style="list-style-type: none"> <li>▪ Non-Samoan natural persons and enterprises that are not wholly-owned by natural persons of Samoa are prohibited from owning or acquiring land or any interest in land. Land may be leased for up to 30 years (renewable once) in the case of land leased or licensed for industrial purposes or a hotel, and 20 years (renewable once) in the other cases.</li> <li>▪ Foreign invested enterprises may be required to provide training to local employees.</li> <li>▪ Unbound for measures: a) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force, or b) regarding the sale or disposal of government-owned entities or assets.</li> </ul> </li> <li>○ Sectoral: <ul style="list-style-type: none"> <li>▪ Manufacturing (excluding related and incidental services) (ISIC rev 3.1: 15-37) except saw milling, traditional lei garment designing and printing, and activities of vessels engaged in the processing and preservation of fish.</li> <li>▪ Joint venture with a local partner is required for manufacturing activities in relation to nonu or virgin coconut oil.</li> </ul> </li> </ul>
<b>2. Most-Favored-Nation (MFN) treatment</b>				
2.1	Investment law includes a specific commitment to the principle of non-discrimination in terms of nationality.	1.50	0.00	<ul style="list-style-type: none"> <li>• The FIA does not specifically guarantee MFN treatment.</li> <li>• The 2019 NIPS notes Samoa's membership in the WTO, and indicates a commitment to WTO rules and principles such as its non-discrimination objective.</li> <li>• Samoa is a signatory to GATS. Article II requires Samoa to immediately and unconditionally afford to service and service suppliers of other Members no less favorable treatment than it accords to the services or service suppliers of any other country.</li> <li>• Samoa has notified MFN exemptions for audio-visual services involving the production and distribution of television programs and cinematographic works (GATS/EL/147).</li> <li>• Chapter 7, Article 3 provides that with respect to measures covered by the Chapter, each Party shall accord immediately and unconditionally to services and service suppliers of another Party treatment no less favourable than that it accords to like services and service suppliers of a non-party.</li> <li>• Chapter 9, Article 7 of PACER Plus includes a commitment by parties to accord to investors and their investments of any other Party to the Agreement treatment no less favorable than it accords, in like circumstances, to investors of a non-party or to their investments with respect to the acquisition, establishment, expansion, management, conduct, operation, and sale or other disposition of investments in its territory. <ul style="list-style-type: none"> <li>– Samoa has listed MFN exemptions in Annex I to facilitate management of existing trade agreements, management of existing and future measures involving aviation, fisheries, and maritime matters, management of regional integration, management of cultural industries, promotion of cultural links between certain countries, and management of core government functions.</li> </ul> </li> <li>• There do not appear to be any policies or legislation in place that discriminate between foreign investors based on their nationality.</li> </ul>
<b>3. Fair and equitable treatment</b>				
3.1	Investment law includes a commitment of fair and	1.50	0.00	<ul style="list-style-type: none"> <li>• The FIA does not specifically guarantee fair and equitable treatment to foreign investors.</li> </ul>

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#	Scoring Criteria	Max	Score	Assessment
	equitable treatment that includes reference to the minimum standard of international law, and guarantees investors will not be subject to unreasonable or discriminatory measures and will have equal access to due process of law.			<ul style="list-style-type: none"> <li>Article 15 of the Samoan Constitution provides all persons freedom from discrimination (unless expressly excluded under another provision of the Constitution) and Article 9 entitles all persons the right to a fair trial.</li> <li>Article 9, Chapter 9 of PACER Plus, which Samoa ratified in May 2019 and which entered into force in December 2020, includes a commitment to fair and equitable treatment and full protection and security in regard to investors and their investments of any other party to the Agreement.</li> </ul>
<b>4. Expropriation</b>				
4.1	Investment law includes a commitment ensuring investors will not be subject to direct expropriation or measures with a similar effect, except for a public purpose, in a non-discriminatory way in accordance with laws and procedures, and subject to prompt, adequate, and effective compensation.	1.50	0.00	<ul style="list-style-type: none"> <li>Section 15 of the FIA indicates that Article 14 of the Constitution applies to foreign investors. Article 14 offers protection against expropriation except under law with provision of adequate compensation within a reasonable time. The Supreme Court has rights of access to determine property interests and compensation amounts.</li> <li>The Taking of Land Act 1964 provides a process under which customary and freehold land may be compulsorily acquired for public purposes.</li> <li>Chapter 9, Article 13 of PACER Plus provides a more detailed commitment regarding expropriation than what is included in the Constitution and the FIA. It specifically covers both direct and indirect expropriation and makes a commitment that compensation will be equivalent to the fair market value of the expropriated investment at the time when expropriation was publicly announced or occurred.</li> <li>Annex 9-C of the Agreement provides additional clarification regarding how indirect expropriation is defined (through case-by-case fact-based inquiries), and clarifies that non-discriminatory regulatory actions by a Party designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety, and the environment, do not constitute indirect expropriation. This clarification is also included in the Constitution.</li> </ul>
<b>5. Convertibility and repatriation of funds</b>				
5.1	Investment law guarantees free and prompt transfer of funds related to foreign investment in a freely convertible currency.	1.00	0.00	<ul style="list-style-type: none"> <li>The FIA does not guarantee repatriation of capital and profits for foreign investors.</li> <li>The 2019 NIPS states that foreign investors have the freedom to repatriate capital subject to approval by the Central Bank of Samoa.</li> <li>Article 9, Chapter 14 of PACER Plus commits to allowing all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Transfers include: contributions to capital, including the initial contribution; profits, capital gains, dividends, royalties, license fees, technical assistance and technical and management fees, interest and other current income accruing from any covered investment; proceeds from the total or partial sale or liquidation of any covered investment; and payments made under a contract, including a loan agreement. Each Party commits to allowing such transfers to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer. Under the commitment, parties may delay a transfer through the equitable, non-discriminatory and good faith application of its laws and regulations related to issues such as bankruptcy, criminal offences, and taxation.</li> </ul>
5.2	Host country does not impose any restrictions on the free and prompt transfer of funds, or if it does, these exceptions are identified.	0.50	0.00	<ul style="list-style-type: none"> <li>The Central Bank of Samoa Act 2015 and the Exchange Control Regulations 1999 institute currency controls in Samoa.</li> <li>Under Regulation 3 of the Exchange Control Regulations, a person is classified as a “resident of Samoa” if they are a citizen or permanent resident of Samoa, who is deemed to be a resident of the country by virtue of having his or her home in Samoa, or a company incorporated in Samoa or that has its head office or center of administrative management in Samoa.</li> <li>The Foreign Exchange Controls Booklet provides a different definition of “resident” as a) a non-citizen that has been granted a permit to reside in Samoa for a period of more than 1 year on assured income, or b) they are a “business entity” (partnerships, companies, branch operation, or sole trader) that is incorporated or registered under the laws of Samoa, whose head office or center of administrative arrangements is in Samoa.</li> <li>The Exchange Control Information Booklet provides that repatriation of capital and profits is permitted; however, it must be approved by CBS.</li> </ul>

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				<ul style="list-style-type: none"> <li>The Exchange Control Information Booklet states that as of 1 August 2021, there is no delegated limit for remitting capital and dividends or operating profits; however, this is assessed on a case-by-case basis. The applicant must provide: <ul style="list-style-type: none"> <li>An application letter.</li> <li>Audited accounts for the related financial year.</li> <li>Board of Directors' resolution signed by at least three directors.</li> </ul> </li> <li>There is insufficient guidance regarding the likely success or amount of remitting capital or profits from Samoa, particularly as many foreign investors would be considered a resident for remittance purposes.</li> </ul>
<b>6. Dispute settlement</b>				
6.1	The country has ratified (and, where applicable to the country's legal system, domestically enacted) international conventions for settlement of investment disputes:	1.50	0.75	Investment disputes can be settled using the Arbitration Act 1976. The legislation is cumbersome, however, and requires updating to reflect modern international practice.
(a)	Convention on the Settlement of Investment Disputes between states and nationals of other states (ICSID); and	0.75	0.75	<ul style="list-style-type: none"> <li>The FIA states Samoa has ratified ICSID and that it has the force of law in the country.</li> </ul>
(b)	New York Convention on Recognition and Enforcement of Arbitral Awards.	0.75	0.00	Samoa is not a party to the New York Convention on the Recognition and Enforcement of Arbitral Awards.
<b>7. Investor behavior</b>				
7.1	Investment law includes a requirement that foreign investors:	1.00	1.00	
(a)	comply with all domestic laws and regulations; and	0.50	0.50	<ul style="list-style-type: none"> <li>The FIA does not include a general requirement for foreign investors to comply with all domestic laws.</li> <li>Section 4(4) of the FIA requires investors operating under restricted activities to meet the prescribed conditions and satisfy all relevant requirements under any other relevant law before the business can be undertaken.</li> </ul>
(b)	provide periodic statistical reports concerning their operations.	0.50	0.50	<ul style="list-style-type: none"> <li>Section 11 of the FIA requires foreign investors to submit annual reports concerning their operations within 6 months of the end of each financial year. The content of the report is not specified in the FIA or Regulations, but a prescribed form has been developed for this purpose. The statutory reporting requirement also requires provision of an enterprise's audited financial reports.</li> </ul>
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>1.25</b>	<b>WEAK</b>

### 3. Foreign Investor Residence in Country

#	Scoring Criteria	Max	Score	Assessment
<b>1. Screening approach</b>				
1.1	Country has a temporary residence permit for investors/businesspersons available to:	2.00	0.00	<ul style="list-style-type: none"> <li>Samoa requires all foreign investors (migrant investors and new/intra-company transferees) to complete a two-step process requiring them to obtain (a) an employment permit from the Industrial Relations, Occupational Safety and Health Division (IROSHD), MCIL, and (b) a temporary resident permit from Immigration, Ministry of Prime Minister and Cabinet.</li> <li>Samoa repealed the Immigration Act 2004 with the commencement of the Immigration Act 2020 on 1 March 2021. No regulations have yet been promulgated under the new law. Section 71(4) of the Immigration Act 2020 saves all notices (effectively, regulations) made under the repealed 2004 Act.</li> </ul>
(a)	owners of a registered foreign investment (immigrant investors) without the need to apply for a separate work permit; and	1.00	0.00	<ul style="list-style-type: none"> <li>Section 58 of the Labour and Employment Relations Act 2013 (LERA) requires every person who is not a Samoan citizen to obtain an employment permit to work in Samoa. Investors who have obtained permanent residence are not required to obtain a work permit as they are regarded as citizens for this purpose (see Section 2, LERA). Note: clause 41 of the Labour and Employment Relations Bill 2022 proposes to retain the exemption of permanent residence holders from obtaining a work permit, and also extend this exemption to “holder(s) of a temporary residence permit granting employment as provided for in the Immigration Act 2004”. This has not been passed by the Parliament, however.</li> <li>Section 4 of the LERA defines “employment” broadly to include “an activity undertaken for gain or reward”, but excludes “business consultations or negotiations in Samoa on establishing, expanding, winding up a business enterprise in Samoa, or carrying on business in Samoa for a period or periods no longer than 3 months in a calendar year”. Accordingly, longer-term investors or intra-company transferees fall under the normal definition of “employment”.</li> <li>The LERA does not distinguish foreign investors from foreign workers. The Foreign Employee Employment Permit Policy (FEEPP) 2018 organizes occupations into categories, with immigrant investors included under a critical skills category and intra-company transfers under their own category.</li> <li>Section 7 of the Immigration Act 2020 requires a non-citizen to have a visa to enter or remain in Samoa. Section 10 of the Immigration Act provides for different categories of visas which can be made via regulation. Regulations have not been made under the new legislation, and practices from the repealed law continue. Temporary residence permits are available for a) business and investment, and b) employment.</li> </ul>
(b)	designated representatives/intra-company transfers of a registered overseas-based investment without the need to apply for a separate work permit.	1.00	0.00	
1.2	If 1.1(a) and/or (b) is met, then the temporary residence permit is:	3.50	0.00	<ul style="list-style-type: none"> <li>Samoa does not meet the requirements of 1.1(a) or 1.1(b).</li> </ul>
(a)	administered solely by the immigration authority and issued without approvals or support from other authorities (excluding FDI entry requirements); and	0.50	0.00	
(b)	issued according to the following decision criteria:	2.00	0.00	

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	<p>(i) only checks ensuring that the foreign investment has successfully met FDI entry requirements, the person has a valid passport and passes objective character and health tests, and has a minimum amount of funds for residence; or</p> <p>(ii) meets the requirements of (i), plus the enterprise must satisfy a minimum investment threshold; or</p> <p>(iii) meets the requirements of (i), plus meet a range of additional, investor-specific requirements; and</p>	<p><u>2.00</u></p> <p><u>1.50</u></p> <p><u>0.50</u></p>	<p><u>0.00</u></p> <p><u>0.00</u></p> <p><u>0.00</u></p>	<ul style="list-style-type: none"> <li>• Application decisions for employment permits are made at the ministerial level, but can be delegated under Section 15 of the LERA.</li> <li>• Application decisions for entry permits are made by the CEO and can be delegated under Section 59 of the Immigration Act.</li> <li>• Section 60 of the LERA requires the Minister for Commerce to consider the applicant's qualifications and training, work references, development of the relevant industry and the number of citizens currently employed in it, and employment requirements under the FIA.</li> <li>• The Foreign Employee Employment Permit Policy 2018 introduced additional decision criteria, some of which are also addressed in the resident permit process, such as evidence of criminal record and applicant health. The Samoa Qualifications Authority must certify any qualifications listed in an application. IROSHD has organized the decision criteria into a point assessment matrix, which is used to assess all employment permit applications.</li> <li>• Section 8 of the Immigration Act requires an applicant to apply for the relevant permit according to prescribed requirements. There are currently no regulations under the Immigration Act 2020.</li> <li>• For applicants for a temporary business and investment entry permit, the following information is required in addition to the temporary residence permit form: <ul style="list-style-type: none"> <li>○ Investment certificate issued by MCIL.</li> <li>○ Business licence from Ministry of Revenue.</li> <li>○ Company registration confirmation from Ministry of Justice and Courts Administration.</li> <li>○ Police report (required for intended stays of more than 1 year).</li> </ul> </li> <li>• For applicants for a temporary employment permit, the following information is required in addition to the temporary residence permit form: <ul style="list-style-type: none"> <li>○ Employer sponsorship form</li> <li>○ Medical report (required for intended stays of more than 1 year)</li> <li>○ Police report (required for intended stays of more than 1 year)</li> <li>○ Originals or certified copies of qualifications, or any supporting references/documentation.</li> </ul> </li> </ul>
(c)	processed in accordance with a statutory processing period of 20 working days or less.	1.00	0.00	<ul style="list-style-type: none"> <li>• Samoa does not have statutory processing times.</li> <li>• IROSHD indicates on its website employment permits applications are normally processed within 5 to 10 working days.</li> <li>• Immigration does not publicly commit to process resident permit applications within a specified timeframe, but its website indicates that processing times are 10 working days.</li> <li>• Neither ministry monitors and reports on actual processing times.</li> </ul>
<b>2. Duration of investor residence permit</b>				
2.1	Investor-class temporary residence permits are issued using a two-stage process: (a) initially for a period sufficient to enable	1.00	0.00	<ul style="list-style-type: none"> <li>• Samoa does not have a two-stage investor-class temporary residence visa. Rather, temporary residence permits are generally connected to the length of the applicant's employment permit.</li> </ul>

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	the investor to demonstrate they have successfully established themselves, such as 1 year, and then (b) once establishment has been verified, for longer periods.			<ul style="list-style-type: none"> <li>Section 60 of the LERA provides that an employment permit can be issued for a maximum of 2 years; however, it may be issued for lesser duration based on the results of IROSHD's grading matrix (minimum 16 months). Amendments to the LERA are planned to increase the maximum term of an employment permit to 3 years to be consistent with Samoa's commitments under PACER Plus (Schedule 9-A).</li> <li>A temporary residence entry permit will generally be issued for a period up to 2 years, corresponding to the maximum term of an employment permit. The Immigration Act 2020 is silent as to the maximum length of a residence permit; however, Section 13(1) of the repealed 2004 Act had a 3-year maximum period.</li> </ul>
2.2	Foreign investors associated with established foreign investments may eventually apply for residence permits with duration of at least 5 years	2.00	2.00	<ul style="list-style-type: none"> <li>The possibility of permanent residency status is available to foreign citizens, including investors. The process does not specify applicant categories, and is based on an annual lottery according to a quota set by Cabinet.</li> <li>The new Immigration Act is silent on the process for issuing permanent residence permits. Under Section 14 of the Immigration Act 2004, permanent resident permits are granted if: (a) it does not exceed the quota for that year, (b) the applicant is of good health, (c) the applicant has observed the laws of Samoa, and (d) they have met or will meet, as the case may require, any eligibility criteria determined by the minister by notice.</li> <li>Samoa introduced a citizenship by investment program in 2017 under the Citizenship Investment Act 2015. Applicants must have a minimum net worth of WST 2.5 million (~USD 920,000), and make an investment of at least WST 4.0 million (~USD 1.47 million) within 3 years from the date an application is granted. A Citizen Investment Committee makes application decisions based on criteria specified in the Citizen Investment Act (Section 10(1)). There has been limited interest in the program to date.</li> </ul>
<b>3. Resident permit fee</b>				
3.1	Total temporary residence permit cost for a foreign investor over a 5-year period:	1.50	1.50	<ul style="list-style-type: none"> <li>Applicants pay a single processing fee to the Samoa Immigration Office when lodging an application. The temporary resident permit fee covers the processing of both the employment permit and resident permit applications. A higher fee is charged if the applicant applies from within Samoa. The application fee if lodged offshore is WST 900 (~USD 330) plus WST 450 (~USD 165) for each dependent, and WST 1,800 (~USD 660) plus WST 450 (~USD 110) for each dependent if lodged while in Samoa. The same fees apply for both conduct of business and employment.</li> <li>Employment and temporary resident permits over a 5-year period for a foreign investor applying outside of Samoa would require at least three applications with a total fee of WST 2,700 (~USD 990). The same applications made in Samoa would cost WST 5,400 (~USD 1980).</li> <li>The application fee for a permanent resident permit is WST 3,200 (~USD 1,250).</li> <li>Total cost for a person under the citizenship by investment program is WST 140,000 (~USD 51,500), which includes an application fee (WST 120,000) and due diligence fees (WST 20,000). Additional costs are charged for family members.</li> </ul>
(a)	less than USD 1,000; or	1.50	1.50	
(b)	USD 1,001 – USD 2,000.	0.75	0.00	
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>3.50</b>	<b>WEAK</b>

## 4. Foreign Direct Investment Monitoring and Reporting

#	Scoring Criteria	Max	Score	Assessment
<b>1. Tracking FDI across government</b>				
1.1	Government regulators have the ability to efficiently communicate with one another about foreign investors through the use of unique business identifiers.	1.50	0.00	<ul style="list-style-type: none"> <li>• Unique business identifiers are not in use.</li> <li>• All businesses are required to obtain a tax identification number (TIN) from the Ministry of Customs and Revenue. This is done following company registration and foreign investment registration. The Ministry of Customs and Revenue includes the TIN on all business licenses it issues.</li> <li>• Foreign investment registration uses its own numbering system, as do approvals issued by other government agencies. When communicating with other government ministries about a foreign investor, MCIL uses their registered business name.</li> </ul>
<b>2. Monitoring and enforcement</b>				
2.1	Transparent criteria define when an FDI is considered established.	0.75	0.00	<ul style="list-style-type: none"> <li>• Transparent criteria are not used to define when an investment has been established.</li> <li>• Section 12(1)(e) of the FIA requires foreign investors to commence operations within 2 years, otherwise their certificate will be cancelled. There are no written criteria (in legislation or otherwise) establishing how MCIL makes this decision.</li> </ul>
2.2	Regulators have legislated inspection powers to determine if the conditions of FDI registration/visas are being breached.	0.75	0.75	<p>FDI Registration</p> <ul style="list-style-type: none"> <li>• Section 19 of the FIA provides MCIL with strong powers: <ul style="list-style-type: none"> <li>○ To require a holder of a certificate, or his or her agent, to provide written or oral answers to questions on any matter relevant to the provisions of the FIA or regulations.</li> <li>○ To require a holder of a certificate or his or her agent to produce any document or record which is in the holder of the certificate's possession and is relevant to the provisions of the FIA or regulations.</li> <li>○ To enter any premises where the holder of a certificate conducts (or is believed to conduct) his or her business, without notice and with reasonable force where necessary, to conduct a search of the premises and to seize any document or record relating to the FIA or regulations (with a warrant issued by the Supreme Court or, in urgent circumstances, the Attorney General).</li> <li>○ To examine and access any computer or other electronic equipment, device, or facility which is used (or is believed to be used) in any business conducted by or owned by the holder of a certificate, and to take copies of any document or record which may be stored within such computer or other electronic equipment, device, or facility (with a warrant issued by the Supreme Court or, in urgent circumstances, the Attorney General).</li> <li>○ Require any bank, financial institution, accountant, or lawyer to produce any document or record in their possession or control concerning a business which is believed to be conducted by or owned by the holder of a certificate, and to provide a copy of any such document or record if requested to do so, unless the information is subject to legal professional privilege (with a warrant issued by the Supreme Court or, in urgent circumstances, the Attorney General).</li> </ul> </li> </ul> <p>Work permits</p> <ul style="list-style-type: none"> <li>• Section 17(1) of the LERA provides Labour Inspectors with strong powers: <ul style="list-style-type: none"> <li>○ Upon prior notice of at least 24 hours, to enter at any hour of the day or night into a place of employment to carry out an investigation or enquiry required under the LERA.</li> <li>○ To carry out any investigation or enquiry which the Inspectors may consider necessary for ensuring compliance with the LERA or any other Act.</li> <li>○ To require the production of books, registers, or other documents required to be kept by the LERA or other laws, in order to ensure compliance with the LERA</li> </ul> </li> </ul>

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				<p>or any other Act, and to copy such documents or make extracts from them.</p> <ul style="list-style-type: none"> <li>○ To direct employers to do any lawful act required under the LERA or any other Act.</li> <li>○ To take or remove, for the purposes of analysis, samples of materials and substances used or handled, subject to the employer or his or her representative being notified of any samples or substances taken or removed for those purposes.</li> </ul> <p>Visas</p> <ul style="list-style-type: none"> <li>● Section 60 of the Immigration Act provides enforcement officers with strong powers to: <ul style="list-style-type: none"> <li>○ Enter using force necessary in the circumstances, any place to arrest a noncitizen who has entered or remains in Samoa in breach of the Immigration Act or any other law.</li> <li>○ Require a person to produce identification evidence and that person's authority for being in Samoa.</li> <li>○ Require a person to answer any question concerning any matter under the Immigration Act.</li> <li>○ Detain and question any person for the purposes of the Immigration Act.</li> <li>○ Inspect, search, and arrest any person for the purposes of the Immigration Act.</li> <li>○ Enter and board any craft for the purposes of the Immigration Act.</li> <li>○ Access any regulated port, docks, and other facilities for the purposes of the Immigration Act.</li> </ul> </li> </ul>
2.3	Offences and penalties are specified in legislation and:	0.50	0.25	
(a)	address all legislated requirements; or	0.50	0.00	<ul style="list-style-type: none"> <li>● The LERA and Immigration Act and address legislated requirements.</li> </ul>
(b)	address some but not all legislated requirements.	0.25	0.25	<ul style="list-style-type: none"> <li>● The FIA does not specify offences and penalties where foreign investors fail to comply with other conditions of the Act, such as: providing false or misleading information; late application for renewal of a certificate; or late submission of an annual report.</li> </ul>
2.4	Regulators proactively monitor:	2.00	2.00	
(a)	FDI to ensure establishment requirements are met; and	1.00	1.00	<ul style="list-style-type: none"> <li>● MCIL is assessing the extent to which foreign investment certificate holders commence business operations and reports on this annually (it has set a target implementation rate of 90%).</li> <li>● MCIL's 2020 annual report indicates that out of 210 foreign enterprises inspected, 23 were confirmed as active and 87 inactive (and subsequently deregistered). Of the active foreign enterprises, 23% were fully compliant and 61% partially compliant.</li> </ul>
(b)	FDI compliance with registration and residence visa requirements	1.00	1.00	<ul style="list-style-type: none"> <li>● A joint task team involving MCIL, Ministry of the Prime Minister and Cabinet (Immigration Division), and the Ministry of Customs and Revenue has been established to raise awareness of provisions and obligations under the FIA, LERA, and other investment-related legislation.</li> </ul>



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<b>3. Appeals</b>				
3.1	Foreign investors have the right to appeal FDI registration decisions, including:	1.00	1.00	<ul style="list-style-type: none"> <li>Section 13 of the FIA provides applicants the right of appeal when an application is denied and provides certificate holders the right to appeal cancellation of a certificate. Both require submission of written requests.</li> <li>The Minister for Commerce hears appeals regarding application denials. Certificate holders who have had their certificates revoked make their appeal to the Supreme Court.</li> </ul>
(a)	denial of an application; and	0.50	0.50	
(b)	revocation of registration.	0.50	0.50	
3.2	Foreign investors have the right to appeal residence permit decisions, including:	1.00	0.00	<ul style="list-style-type: none"> <li>Section 49 of the Immigration Act provides that a person applying for a visa or a holder of a visa does not have an appeal right: <ul style="list-style-type: none"> <li>Regarding the grant of the visa.</li> <li>To challenge, seek review or bring any other legal proceeding in any court regarding the grant or denial of a visa, the cancellation of a visa, or the imposition of any term or condition of any visa granted under the Immigration Act.</li> </ul> </li> <li>Section 49 does not apply to permanent residence visas. Section 51 provides that a person holding a permanent residence visa may appeal to the minister from the decision of the CEO.</li> <li>Section 54 provides that a system of administrative review may be established by the regulations.</li> </ul>
(a)	denial of application; and	0.50	0.00	
(b)	revocation of residence permit.	0.50	0.00	
<b>4. Reporting</b>				
4.1	Non-commercially sensitive information about a registered foreign investment's ownership and investment activities is:	1.50	0.50	<ul style="list-style-type: none"> <li>Section 10 of the FIA includes a requirement for MCIL to maintain a register of foreign investments and make the information publicly available.</li> </ul>
(a)	available online; or	1.50	0.00	
(b)	only available through requests to the regulator.	0.50	0.50	
4.2	Periodic FDI reports address the following:	1.50	0.50	<ul style="list-style-type: none"> <li>Section 11A of the FIA requires MCIL to prepare an annual foreign investment report within 6 months of the end of each financial year. The FIA does not provide guidance as to the report's form or content, although MCIL has developed a status report format for this purpose. The reports provide data on new registrants, monitoring, and promotional efforts, and identify issues and challenges. These reports are not currently publicly released, although FIA allows for this.</li> <li>MCIL makes information on registered foreign investments available to the public through its annual ministry reports, the latest of which is from 2019-2020. Information included in the report is limited to the number of new foreign investment certificates issued and renewed, the extent to which certificate holders become operational, and proposed impacts associated with new registrations.</li> </ul>
(a)	make up of FDI in the country; and	0.25	0.25	
(b)	extent to which investment actually occurs; and	0.25	0.25	
(c)	actual impacts associated with FDI.	1.00	0.00	
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>5.00</b>	<b>MODERATE</b>

## 5. Investment Promotion

#	Scoring Criteria	Max	Score	Assessment
<b>1. Strategic approach to investment</b>				
1.1	IPI is guided by clear and realistic goals against which the IPI's performance is managed.	2.00	0.00	<ul style="list-style-type: none"> <li>The Government of Samoa has not endorsed a set of quantifiable FDI goals.</li> <li>The Strategy for the Development of Samoa (SDS) recognizes the importance of private sector investment to the economy but doesn't establish any general or FDI-specific quantitative investment goals. The SDS identifies streamlining the foreign investment system and increasing the number of issued foreign investment certificates as key intended outcomes.</li> </ul>
1.2	IPI has its services driven by a written, multi-year investment promotion strategy.	2.00	0.00	<ul style="list-style-type: none"> <li>MCIL has not developed an investment promotion strategy.</li> <li>MCIL's Corporate Plan identifies a number of promotional activities and performance indicators but they are general in nature, i.e., increase number of registered foreign investments, facilitate appointments, increase awareness of Samoa's investment environment.</li> <li>Sector priorities identified in the SDS include agriculture and fisheries, tourism, and goods exports. MCIL expands the list of priorities in its 2019 Investment Guide: tourism, fisheries, food processing, engineering, timber and furniture, coconut, garment and textiles, and services.</li> <li>Sector development plans have been developed for sustainable tourism and agriculture (including fisheries and agro-forestry). Both call for increased private investment, and identify constraints in the business-enabling environment. Neither identifies specific types of investments that should be pursued, although the Tourism Sector Plan identifies the need for a tourism investment strategy to address this gap.</li> </ul>
<b>2. Organizational form</b>				
2.1	IPI is an:	1.50	0.50	<ul style="list-style-type: none"> <li>IDIPD is a sub-unit of MCIL and is responsible for delivering investment promotion services as well as administering a range of business assistance programs (duty concession scheme, Code 121 Scheme, Aviation Transport Development Scheme).</li> </ul>
(a)	autonomous agency; or	1.50	0.00	
(b)	integral unit of a major ministry; or	1.00	0.00	
(c)	sub-unit of a major ministry.	0.50	0.50	
2.2	IPI has access to private sector experience in an oversight or advisory role:	0.50	0.00	<ul style="list-style-type: none"> <li>IDIPD has private sector representation; however, it is in relation to its regulatory functions under the FIA.</li> <li>Section 6A of the FIA establishes a Foreign Investment Advisory Committee.</li> <li>The committee's primary role is to review the Reserved and Restricted, Lists but can provide advice to the Minister for Commerce on other matters related to the FIA. The committee meets on an "as needed" basis.</li> <li>The committee comprises 11 ex-officio members, of which 2 (18%) are from the private sector: <ul style="list-style-type: none"> <li>CEO, MCIL (Chair).</li> <li>CEO, Ministry responsible for Finance (Deputy Chair).</li> <li>Attorney General.</li> <li>Governor, Central Bank.</li> <li>CEO, Ministry responsible for Revenue.</li> <li>CEO, Agriculture and Fisheries.</li> <li>CEO, Tourism Authority.</li> <li>CEO responsible for Prime Minister's Office.</li> <li>CEO responsible for Foreign affairs and Trade.</li> <li>President, Samoa Chamber of Commerce and Industry.</li> <li>President, Samoa Association of Manufacturers and Exporters.</li> </ul> </li> </ul>
(a)	board has at least 40% private sector representation; or	0.50	0.00	
(b)	board has some private sector representation.	0.25	0.00	

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<b>3. IPI functions</b>				
3.1	IPI's role is:	1.00	0.00	<ul style="list-style-type: none"> <li>• IDIPD performs several regulatory functions, including: <ul style="list-style-type: none"> <li>○ Administering the foreign investment registration process.</li> <li>○ Monitoring foreign investor compliance with the FIA.</li> <li>○ Investment promotion services.</li> <li>○ Administration of several government industry support programs.</li> </ul> </li> <li>• IDIPD has five officers responsible for its foreign investment responsibilities. They are all involved in regulatory and promotion activities.</li> <li>• MCIL is responsible for a broad range of areas including employment services, consumer protection, business registration, seasonal employment schemes, intellectual property, industry promotion, and industry development.</li> </ul>
(a)	limited solely to providing investment promotion services; or	1.00	0.00	
(b)	broader than investment promotion but does not involve regulatory responsibilities such as FDI monitoring and enforcement.	0.50	0.00	
<b>4. IPI activities</b>				
4.1	IPI maintains an investment promotion website with the following up to date information:	1.10	0.60	<ul style="list-style-type: none"> <li>• MCIL maintains a website (<a href="https://www.mcil.gov.ws">https://www.mcil.gov.ws</a>) addressing its areas of responsibility, including IDIPD. Additional information relating to foreign investment certification is available at the Samoa Trade Information Portal (<a href="https://samoa.tradeportal.org/">https://samoa.tradeportal.org/</a>).</li> <li>• The investment promotion sub-section of the IDIPD tab is devoted primarily to describing the Citizen Investment Program, but includes links to several useful marketing materials, which for the most part are being regularly updated.</li> <li>• Samoa's National Investment Policy Statement 2019 is available on the MCIL website. MCIL reports that its NIPS will be updated in 2022.</li> <li>• Information concerning business start-up and operational requirements is available on the MCIL website and on the Samoa Trade Information Portal.</li> <li>• Information on the strengths of the country as an investment destination is available in the Samoa Investment Guide on the MCIL website.</li> <li>• Business cost data is not available on the MCIL website.</li> <li>• Business conditions within priority sectors are somewhat outlined in the Samoa Investment Guide; however, the information is very general.</li> <li>• Investor testimonials are not available on the MCIL website.</li> <li>• Contact details are available on the MCIL website. It is noted, however, that contact details are not found alongside the other promotional materials, and contact details are not for investment promotion staff specifically, but for MCIL in general.</li> </ul>
(a)	National Investment Policy Statement; and	0.30	0.30	
(b)	key business start-up and operational requirements; and	0.10	0.10	
(c)	strengths of the country as an investment destination; and	0.10	0.10	
(d)	business cost data; and	0.20	0.00	
(e)	business conditions within priority sectors and potential areas for investment; and	0.20	0.00	
(f)	investor testimonials; and	0.10	0.00	
(g)	contact details.	0.10	0.10	
4.2	IPI provides facilitation services:	0.60	0.20	<ul style="list-style-type: none"> <li>• IDIPD responds promptly to investor inquiries using informal protocols.</li> <li>• IDIPD does not use account managers, and efforts are not being made to establish ongoing client engagement.</li> <li>• Assistance is provided to investors in regard to foreign investment registration, but support for other approvals is limited.</li> </ul>
(a)	protocols in place enabling prompt response to investor inquiries; and	0.20	0.20	
(b)	account managers facilitate investments in priority sectors; and	0.20	0.00	
(c)	proactive support provided to investments in priority sectors.	0.20	0.00	

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#	Scoring Criteria	Max	Score	Assessment
4.3	IPI regularly undertakes advocacy across government to improve the investment climate.	0.30	0.00	<ul style="list-style-type: none"> <li>IDIPD does not regularly undertake advocacy across government to improve the investment climate.</li> </ul>
<b>5. Streamlined online approvals</b>				
5.1	Investors have the ability to complete investment approvals through electronic systems for:	1.00	0.40	
(a)	foreign investment certification; and	0.20	0.00	<ul style="list-style-type: none"> <li>Foreign investment certification is done through MCIL and cannot be completed online.</li> </ul>
(b)	company registration; and	0.20	0.20	<ul style="list-style-type: none"> <li>Company registration is available online at <a href="https://www.businessregistries.gov.ws/">https://www.businessregistries.gov.ws/</a>.</li> </ul>
(c)	business names registration (if applicable); and	0.20	0.20	<ul style="list-style-type: none"> <li>Note: Samoa does not currently have a business names system. Given that Samoa does not place this requirement on investors it has been awarded the score.</li> </ul>
(d)	tax registration; and	0.20	0.00	<ul style="list-style-type: none"> <li>Tax registration is done through the Ministry of Customs and Revenue and cannot be completed online.</li> </ul>
(e)	business licences.	0.20	0.00	<ul style="list-style-type: none"> <li>Business licences are issued by the Ministry of Customs and Revenue and cannot be completed online.</li> </ul>
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>1.70</b>	<b>WEAK</b>

## 6. Reserved and Restricted Activities

### Foreign Investment Act 2000, Schedule 1

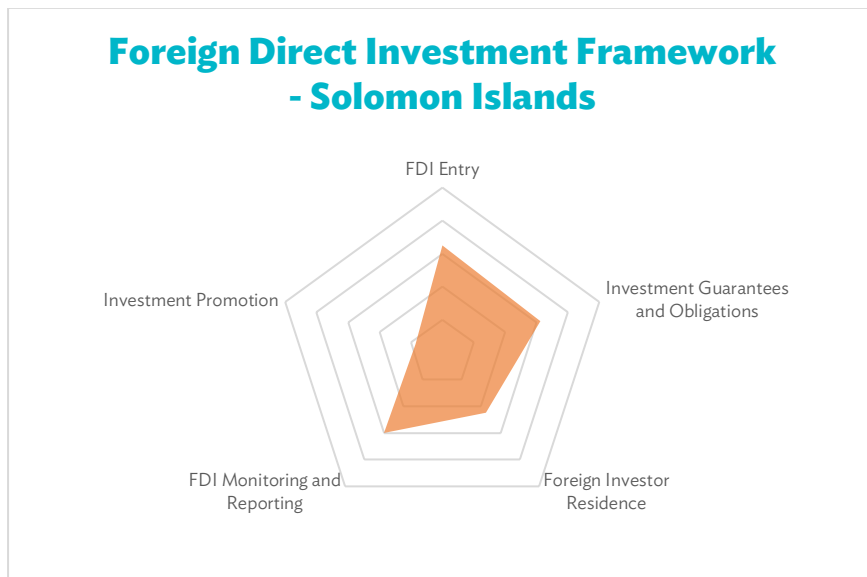
#### RESERVED LIST

Activity	Description	Related activities excluded
Bus transport services for the general public	Urban, suburban, and rural regularly scheduled multi-stop passenger transportation on land. Services classified here are motor-bus, and similar services generally rendered on a license basis within the confines of a single area or group of contiguous villages. These services are provided over predetermined routes on a predetermined time schedule, may provide pick-up and discharge of passengers at any scheduled stop, and are open to any user.	
Taxi transport services for the general public	Motorized taxi-cab services, including urban, suburban, and interurban. These services are generally rendered on a distance travelled basis, for a limited duration of time, and to a specific destination.	
Rental vehicles	Renting, hiring, or leasing services concerning private motor cars without operator, principally designed for the transport of persons.	Renting or hiring services of private cars with operator, such as rental services of passenger cars with operator.
Retailing	Retail sales of fruit and vegetables - Retailing services of fresh, dried, frozen, or canned fruits, nuts, and vegetables.	
	Retail sales of dairy products and eggs - Retailing services of dairy products and eggs.	
	Retail sales of meat (including poultry) and meat products - Retailing services of meat, poultry and game, and meat products.	
	Retail sales of fish and other seafoods - Retailing services of fresh, prepared and preserved fish, and other seafood.	
	Retail sales of bread and flour confectionery - Retailing services of bread and other bakery products.	
	Retail sales of sugar confectionery - Retailing services of sugar confectionery, e.g., fruit or nuts preserved by sugar.	
	Retail sales of beverages not consumed on the spot - Retailing services of non-alcoholic or alcoholic beverages.	Retailing services of beverages for consumption on the premises
	Retail sales of tobacco products - Retailing services of tobacco products.	
	Specialized retail sales of food products n.e.c. - Retailing services of food products not elsewhere classified, e.g., rice, edible oils and fats, salt, coffee, tea, sugar, cocoa and spices, noodles, and similar farinaceous products.	
Saw milling	Facility where logs are cut into timber.	
Traditional elei garment designing and printing	Garment printing and designing using carved board (Upeti).	

**Foreign Investment Act 2000, Schedule 2**  
**RESTRICTED LIST**

<b>Economic Sector</b>	<b>Economic Sub-sector</b>	<b>Conditions</b>
Fishing	Commercial fishing vessels – vessels categories A ( $\leq 11\text{m}$ in length), B ( $11\text{m} \leq 12.5\text{m}$ in length), C ( $12.5\text{m} \leq 15\text{m}$ in length), D ( $15\text{m} \leq 20.5\text{m}$ in length) and E ( $\geq 20.5\text{m}$ in length), categorized by the ministry responsible.	A foreign investor must have a maximum of 40% equity. A license issued for commercial fishing vessels is limited in different categories listed by the ministry responsible for fisheries, except for Category A with no limit.
Manufacturing	Nonu (known scientifically as <i>Morindacitrifolia</i> , is a tropical fruit processed as juice for many folk remedy uses).	A foreign investor must establish a joint venture with a local partner.
	Coconut Virgin Oil (oil from the coconut that is in its unrefined and natural form, without fragrance and other added preservatives).	A foreign investor must establish a joint venture with a local partner.
Services	Architectural	A foreign investor must establish a joint venture with a local partner.
	Professional engineering	A foreign investor providing an engineering service must be incorporated in Samoa.
	General construction	Only through incorporation in Samoa.
	Sewage	A foreign investor providing a sewage service must establish a joint venture with a local partner.
	Refuse disposal	A foreign investor providing a refuse disposal service must establish a joint venture with a local partner.
	Sanitation and similar services	A foreign investor providing a sanitation and similar service must establish a joint venture with a local partner.

## Country Assessment Matrix: Solomon Islands



Factor	Alignment
Foreign Direct Investment (FDI) Entry	MODERATE
Investment Guarantees and Obligations	MODERATE
Foreign Investor Residence	WEAK
FDI Monitoring and Reporting	MODERATE
Investment Promotion	WEAK

## 1. Foreign Direct Investment Entry

#	Scoring Criteria	Max	Score	Assessment
<b>1. FDI Screening</b>				
1.1	General screening	5.00	0.00	
(a)	FDI is not separately screened and foreign investors are required to comply with business registration requirements like a citizen-owned business; or	3.50	0.00	<ul style="list-style-type: none"> <li>Section 12(3) of the Foreign Investment Act 2006 (FIA) provides that a foreign investor must hold a certificate of registration before they may a) conduct an investment activity; b) negotiate and enter into any agreement, arrangement, or memorandum of understanding relating to the conduct of the investment activity; or c) commence steps to become authorized to conduct the investment activity (other than requirements under the FIA).</li> </ul>
(b)	additional FDI registration is required:	1.75	1.50	
(i)	relevant processes and assessment criteria are up to date, outlined in detail, and made readily accessible to investors; and	0.25	0.00	<ul style="list-style-type: none"> <li>Solomon Islands does not codify detailed information concerning how FDI certification applications are made.</li> <li>The Invest Solomons website provides some detail for registration; however, it focuses more on the electronic application process with limited explanatory information.</li> <li>The Solomon Islands Trade Portal does not provide information concerning FDI certification.</li> </ul>
(ii)	registration applies to investments with any level of direct foreign ownership; and	0.25	0.25	<ul style="list-style-type: none"> <li>The FIA captures all direct foreign investment as defined.</li> <li>Section 2 defines a “foreign investor” as a person investing or intending to invest in Solomon Islands (whether by themselves, as a member of a joint venture, as a partner in a partnership, as a trustee, or otherwise) who or which is: <ul style="list-style-type: none"> <li>a natural person who is not a citizen of Solomon Islands, or</li> <li>a body corporate which is established, registered, or incorporated outside of Solomon Islands, or, if established, registered or incorporated in Solomon Islands, in which a foreign investor is a member entitled to exercise at least one vote or a shareholder holding at least one voting share (as the case may be).</li> </ul> </li> <li>Section 2 defines an “investment activity” as a commercial, economic, industrial, or professional activity carried out in Solomon Islands as a business or part of a business.</li> </ul>
(iii)	registration criteria are objective and limited to ensuring that proposed investments are consistent with pre-determined reserved/restricted lists and the investor(s) is not breaching disqualification criteria; and	0.25	0.25	<ul style="list-style-type: none"> <li>Section 20 of the FIA requires the Registrar to register an investment activity specified in an application if it does not involve conducting a prohibited activity or a reserved activity.</li> </ul>
(iv)	application process requires information limited to investor	0.25	0.25	<ul style="list-style-type: none"> <li>Foreign investment certification applications are made online.</li> <li>The following information is required by the online application system: <ul style="list-style-type: none"> <li>Organization type:</li> </ul> </li> </ul>



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#	Scoring Criteria	Max	Score	Assessment
	biographical information; business name; contact details; description of investment and business information; and a brief business plan; and			<ul style="list-style-type: none"> <li>▪ Proposed Solomon Islands company (name availability check).</li> <li>▪ Existing Solomon Islands company.</li> <li>▪ Partnership.</li> <li>▪ Other.</li> </ul> <ul style="list-style-type: none"> <li>○ Investor information: <ul style="list-style-type: none"> <li>▪ Name.</li> <li>▪ Residential physical address.</li> <li>▪ Contact details.</li> <li>▪ Nationality.</li> <li>▪ Passport number.</li> <li>▪ Passport upload.</li> <li>▪ Resume upload.</li> <li>▪ Local representative details.</li> <li>▪ Address for service of notices.</li> </ul> </li> <li>○ Business activities: <ul style="list-style-type: none"> <li>▪ Main business sector.</li> </ul> </li> <li>○ ISIC business activity code.</li> <li>○ Business activity information: <ul style="list-style-type: none"> <li>▪ Description of business activity.</li> <li>▪ Business activity upload.</li> <li>▪ Business plan upload.</li> </ul> </li> <li>○ Operating locations: <ul style="list-style-type: none"> <li>▪ Principal business location address.</li> <li>▪ Additional business location address(es).</li> </ul> </li> <li>○ Employment: <ul style="list-style-type: none"> <li>▪ Proposed employment: citizen/non-citizen; work type.</li> </ul> </li> <li>○ Investment: <ul style="list-style-type: none"> <li>▪ Proposed investment (in SBD): estimated value in first year of operations; primary origin of funds; estimated value of export in first year of operations; and estimated value of sales in first year of operations.</li> </ul> </li> <li>○ Declarations: <ul style="list-style-type: none"> <li>▪ Solvency.</li> <li>▪ Criminal history.</li> <li>▪ Incorporated entity offences.</li> <li>▪ No criminal or civil proceedings.</li> </ul> </li> </ul>
	(v) there is a legal obligation for the regulator to keep information disclosed in the application process confidential; and	0.25	0.25	<ul style="list-style-type: none"> <li>• Section 33 of the FIA makes it an offence for a person, in the course of the administration of the Act, to disclose information received unless for a lawful reason.</li> </ul>
	(vi) there is a statutory requirement to be completed within 5 working days; and	0.25	0.25	<ul style="list-style-type: none"> <li>• Section 17(1) of the FIA requires the Registrar to, as soon as practicable after receiving the application, to assess whether the application specifies all the required information under Section 16, and whether the information specified is sufficient for determining the nature of the investment activity.</li> <li>• Section 17(2) enables the Registrar to require additional information, and Section 17(4) enables the Registrar to request the applicant provide written consents or signed authorities as necessary for carrying out investigations or making enquiries.</li> <li>• Section 17(5) requires the Registrar to issue a dated receipt of the application.</li> <li>• Section 18(1) requires the Registrar to within 5 days of issuing the application receipt:</li> </ul>

#	Scoring Criteria	Max	Score	Assessment
	(vii) Approval is open-ended and only needs to be varied for changes in business name, ownership, or investment activities.	0.25	0.25	<ul style="list-style-type: none"> <li>○ consider the application for the purposes of -                             <ul style="list-style-type: none"> <li>▪ determining the nature of each investment activity specified in the application (including, in particular, whether conducting the investment activity would involve conducting a prohibited activity or a reserved activity); and</li> <li>▪ deciding whether to register or refuse to register each investment activity; and</li> </ul> </li> <li>○ give written notice to the foreign investor that shall state in respect of each investment activity specified in the application -                             <ul style="list-style-type: none"> <li>▪ that they will register or they refuse to register the investment activity; or</li> <li>▪ if, within that 5-day period, they have been unable to decide whether to register or refuse to register the investment activity, that they are consulting regarding the nature of the investment activity and will notify the foreign investor of his decision whether to register or to refuse to register the investment activity as soon as practicable.</li> </ul> </li> </ul> <ul style="list-style-type: none"> <li>• Registration certificates are open-ended but can be amended where there are changes in key information. Section 22(3) requires that if a foreign investor to whom a certificate of registration has been issued changes any of the following details, they shall notify the Registrar of the change within 25 days after the change occurs:                             <ul style="list-style-type: none"> <li>○ The business name (if any) under which the foreign investor conducts the investment activity.</li> <li>○ The address of a premises where the foreign investor conducts an investment activity.</li> <li>○ The address for service of notices and other documents on the foreign investor.</li> <li>○ The prescribed details (if any).</li> </ul> </li> </ul>
1.2	Complex screening used in a few strategic areas:	1.50	1.50	<ul style="list-style-type: none"> <li>• Solomon Islands does not impose additional FDI screening.</li> </ul>
(a)	no; or	1.50	1.50	
(b)	yes:			
	(i) uses transparent procedures and clearly defined timelines; or	1.00	0.00	
	(ii) does not use transparent procedures and clearly defined timeframes.	0.25	0.00	
<b>2. Investment law general restrictions</b>				
2.1	General minimum investment requirement not imposed.	0.25	0.25	<ul style="list-style-type: none"> <li>• The FIA does not impose general minimum investment requirements on FDI.</li> </ul>

#	Scoring Criteria	Max	Score	Assessment
2.2	General foreign equity restrictions not imposed.	0.25	0.25	<ul style="list-style-type: none"> <li>The FIA does not impose general foreign equity restrictions on FDI.</li> </ul>
2.3	General performance requirements not imposed.	0.25	0.25	<ul style="list-style-type: none"> <li>The FIA does not impose general performance requirements on FDI.</li> </ul>
<b>3. Investment law sector or activity-specific restrictions</b>				
3.1	Negative list approach is used.	1.00	1.00	<ul style="list-style-type: none"> <li>The Foreign Investment Act uses a negative list approach. It establishes a reserved list of activities from which FDI is excluded under the Foreign Investment Regulations 2005.</li> </ul>
3.2	Total number of reserved and restricted activities is:	1.00	0.00	<ul style="list-style-type: none"> <li>Solomon Islands updated its reserved list in 2020 under the Foreign Investment (Amendment) Regulations 2020. The Solomon Islands Reserved Activities List covers 21 reserved activities; however, marine activities as expressed could be interpreted as covering 25 activities.</li> <li>The 2020 update represents an expansion of the reserved list, adding: <ul style="list-style-type: none"> <li>Bungalow, eco-lodge, and homestay accommodation which has less than 10 beds.</li> <li>Local bird sanctuaries and marine aquarium zoos.</li> <li>Hair and beauty produce distribution and salon services.</li> <li>Driving school services.</li> <li>Wholesale and retail trading of second-hand clothing.</li> </ul> </li> </ul>
(a)	5 or fewer; or	1.00	0.00	
(b)	6 – 10; or	0.75	0.00	
(c)	11 – 20; or	0.50	0.00	
(d)	more than 20.	0.00	0.00	
3.3	Reserved and/or restricted sectors are not export-oriented or important inputs into other businesses.	0.50	0.00	<ul style="list-style-type: none"> <li>Reserved activities are generally not export-oriented or important inputs into other businesses.</li> <li>Some activities—such as retail trading of housing and general goods and services; and customs clearance—may be viewed as important inputs into other businesses.</li> <li>Many activities are expressed as being as restricted for investment if they are intended to be “on the domestic market”, although in practice it may be difficult to differentiate some activities.</li> </ul>
<b>4. Consistency in setting sector/activity limitations</b>				
4.1	Market access limitations are not being set in national policy or legislation outside of the investment law.	0.75	0.75	<ul style="list-style-type: none"> <li>Limitations on FDI do not appear to be imposed by government agencies outside of those identified in the FIA.</li> <li>The Constitution of the Solomon Islands prevents non-Solomon Islanders acquiring a perpetual interest in land; however, it does enable laws to be made for fixed-term interests. The Land and Titles Act outlines further restrictions on foreigners acquiring fixed-term interests in customary and public land.</li> </ul>
4.2	Market access commitments made in bilateral and multilateral investment agreements are not less restrictive than those in the investment law.	0.25	0.25	<ul style="list-style-type: none"> <li>Solomon Islands is a signatory to the General Agreement of Trade in Services (GATS).</li> <li>Solomon Islands has provided provisional notifications on limitations on market access; however, these are out of date and incomplete. These involve foreign certification; overseas company registration; prohibitions on land ownership; minimum debt to equity ratios; reserved activities; and immigration requirements.</li> <li>Solomon Islands has provided provisional notifications on limitations on market access (GATS/SC/117): <ul style="list-style-type: none"> <li>Horizontal <ul style="list-style-type: none"> <li>Commercial presence:</li> </ul> </li> </ul> </li> </ul>

#	Scoring Criteria	Max	Score	Assessment
				<ul style="list-style-type: none"> <li>• Normal government approval and registration is required for all foreign investors by the Foreign Investment Board. Such approval is based on an economic needs test, for which the following criteria are, in general, used: (i) provision of new services; (ii) improvement of productive structure of the economy; (iii) viability of the new project especially with respect to foreign exchange earnings or savings; (iv) implications for employment in the Solomon Islands</li> <li>• Companies incorporated outside the Solomon Islands must register the name of the company with the Registrar of Companies in the Solomon Islands.</li> <li>• Foreign nationals and foreign-owned companies may not purchase land, but may lease from government or landholding groups.</li> <li>• Foreign investors must have a debt to equity ratio of 2:1.</li> <li>▪ Presence of natural persons: <ul style="list-style-type: none"> <li>• Unbound except for measures affecting the entry and temporary stay of natural persons in the following categories: managers and specialists who possess knowledge that is necessary for the provision of the service. Entry and temporary stay is limited to those of key importance and where employees are unavailable locally. Entry is limited to 2 years initially with any extension subject to Immigration and Labour requirements.</li> </ul> </li> <li>○ Sectoral <ul style="list-style-type: none"> <li>▪ Legal services, home country law, including public international law (CPC 861**) <ul style="list-style-type: none"> <li>• Commercial presence: None, other than the commercial presence must take the form of a sole proprietorship or partnership.</li> <li>• Presence of natural persons: Unbound except as indicated in the horizontal section.</li> </ul> </li> <li>▪ Accounting, auditing and bookkeeping services (CPC 862); Architectural services (CPC 8671); Engineering services (CPC 8672); General construction work for buildings (CPC 512); General construction work for civil engineering (CPC 513); Banking and other financial services (excl. insurance (CPC 811-813); Hotels and restaurants (including catering) (CPC 641-643) <ul style="list-style-type: none"> <li>• Presence of natural persons: Unbound except as indicated in the horizontal section.</li> </ul> </li> </ul> </li> <li>• Solomon Islands' schedule of specific service commitments in Annex 7A of the PACER Plus agreement are largely consistent with GATS commitments.</li> </ul>
<b>5. Review of investment law limitations and restrictions</b>				
5.1	The investment law requires review of limitations or restrictions to:	0.75	0.75	

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#	Scoring Criteria	Max	Score	Assessment
(a)	take place periodically, and include public consultations; and	0.25	0.25	<ul style="list-style-type: none"> <li>Section 10 of the FIA provides for the process of reviewing reserved activities.</li> <li>An assessment must be conducted at least every 2 years by the Registrar under Section 10(2); however, it does not appear that regular assessments are being undertaken in accordance with legislation. Additionally, any person may recommend in writing to the Registrar an assessment of the reserved list, specifying their reasons for recommending the assessment under Section 10(4)-(5). The Registrar must consider the recommendation and determine whether to conduct an assessment for the reasons specified in the recommendation, as per Section 10(6).</li> <li>If a review is conducted, the Registrar must consult with appropriate agencies of both the national government and provincial governments as per Section 10 (3).</li> <li>After conducting the review, the Registrar must report in writing to the minister on the conduct and outcomes of the review, and advise the minister which activities, in their opinion, should be included in, or omitted from, the reserved list as per Section 10(7).</li> <li>The minister must seek cabinet approval before making any changes to the reserved list as per Section 10(8).</li> <li>The reserved list was last reviewed in 2018-2019 and updated in 2020.</li> </ul>
(b)	be decided using clearly defined principles; and	0.25	0.25	<ul style="list-style-type: none"> <li>Section 9(3) of the FIA provides that an investment activity is not to be specified in the reserved list: <ul style="list-style-type: none"> <li>unless at least one citizen of Solomon Islands (whether by themselves a member of a joint venture, partner in a partnership, trustee or agent, or employee) conducts the investment activity in Solomon Islands; and</li> <li>unless at least 10 business operations conduct the investment activity in Solomon Islands; and</li> <li>if it is carried on as a business or part of a business that produces or supplies goods or services which are used regularly by, or are otherwise important for the operation of, other businesses in Solomon Islands.</li> </ul> </li> <li>Section 10(1) of the FIA provides that the purpose of reviewing the reserved list is to assess whether to reduce the reserved activities specified, in order to promote a competitive economy in Solomon Islands.</li> <li>The legislative guidelines do not appear to be followed by the Solomon Islands government. Previous governments have expressed an intention to expand the reserved list which was updated in 2020.</li> </ul>
(c)	provide that an existing foreign investor affected by the introduction of a new limitation or restriction can continue to operate in the activity.	0.25	0.25	<ul style="list-style-type: none"> <li>Section 9(5) of the FIA enables grandfathering of certificate holders who are operating in an activity which subsequently becomes reserved.</li> </ul>
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>6.50</b>	<b>MODERATE</b>

## 2. Investment Guarantees and Obligations

#	Scoring Criteria	Max	Score	Assessment
<b>1. National treatment</b>				
1.1	Investment law includes a commitment to the principle of national treatment with either no exceptions, or clearly acknowledged exceptions relating to the establishment, expansion, management, operation, and protection of their investments.	1.50	0.00	<ul style="list-style-type: none"> <li>• The FIA does not explicitly provide any guarantee of national treatment to investors.</li> <li>• Foreigners have restricted access to land, although this is generally well advertised. Section 110 of the Solomon Islands Constitution restricts the holding of perpetual estates (similar to freehold title) to Solomon Islanders. Under the Lands and Titles Act [Cap 133], in general interests in customary land cannot be given to non-Solomon Islanders. Foreigners may however acquire leases or fixed term estates over registered land. The general convention is for longer-term interests in land to be valid for 25-50 years.</li> <li>• Solomon Islands is a signatory to GATS. Article XVII requires that “in the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any Member, in respect of all measures affecting the supply of services, treatment no less favorable than it accords to its own services and service providers.”</li> <li>• In its draft list of specific commitments under GATS Solomon Islands only notes that legal services, home country law, including public international law must take the form of a sole proprietorship or partnership. General horizontal limitations on market access are noted as well.</li> <li>• Solomon Islands has notified the following limitations on national treatment under GATS: <ul style="list-style-type: none"> <li>- Horizontal <ul style="list-style-type: none"> <li>▪ Presence of natural persons - Foreign employees are required to provide on-the-job training to local employees</li> </ul> </li> <li>- Sector-specific: <ul style="list-style-type: none"> <li>▪ Legal services (commercial presence) – None, other than the commercial presence must take the form of a sole proprietorship or partnership</li> <li>▪ General construction work for civil engineering (cross-border supply) – Unbound except where resources and materials are not available locally</li> </ul> </li> </ul> </li> <li>• Chapter 7, Article 6 of Pacer Plus requires parties to the Agreement in reference to the sectors specified in Annex 7-A to accord to services and service supplies of another party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own services and service suppliers. This is subject to any conditions or qualifications specified in Annex 7-A.</li> <li>• In relation to Chapter 7, Solomon Islands has notified the following limitations on national treatment for commercial presence: <ul style="list-style-type: none"> <li>- Horizontal: <ul style="list-style-type: none"> <li>▪ Pursuant to the Foreign Investment Act 2005 and Foreign Investment Regulations 2006, as at the date of signature of the PACER Plus, a certificate of registration must be obtained by investors of another Party that intends to conduct an investment activity</li> <li>▪ Natural persons that are not citizens of the Solomon Islands and enterprises that are not wholly-owned by citizens of the Solomon Islands are prohibited from owning or acquiring land or any interest in land. Land may be leased from government</li> </ul> </li> </ul> </li> </ul>

#	Scoring Criteria	Max	Score	Assessment
				<p>and land-holding groups.</p> <ul style="list-style-type: none"> <li>- Sectoral: <ul style="list-style-type: none"> <li>▪ Transport services, International Transport (freight and passengers) (CPC 7211 and 7212), excluding cabotage transport – unbound</li> </ul> </li> <li>• Chapter 9, Article 6 of Pacer Plus includes a commitment to according investors and covered investments of investors of any other Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the acquisition, establishment, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.</li> <li>• In relation to Chapter 9, Solomon Islands has notified the following limitations on national treatment: <ul style="list-style-type: none"> <li>- Horizontal: <ul style="list-style-type: none"> <li>▪ Natural persons who are not citizens of the Solomon Islands and enterprises that are not wholly-owned by citizens of the Solomon Islands are prohibited from owning or acquiring land or any interest in land. Land may be leased from government and landholding groups.</li> <li>▪ Pursuant to the Foreign Investment Act 2005 and Foreign Investment Regulations 2006, as at the date of signature of the PACER Plus, a certificate of registration must be obtained by investors of another Party that intends to conduct an investment activity</li> <li>▪ Unbound for measures: a) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force; or, b) regarding the sale or disposal of government-owned entities or assets.</li> </ul> </li> </ul> </li> </ul>
<b>2. Most-Favored-Nation (MFN) treatment</b>				
2.1	Investment law includes a specific commitment to the principle of non-discrimination in terms of nationality.	1.50	1.50	<ul style="list-style-type: none"> <li>• Section 29(3) of the FIA states that the law of Solomon Islands shall, in relation to foreign investors who conduct investment activities, be administered in a manner that promotes specified guarantees.</li> <li>• Schedule 2 refers to “Member economies will extend to investors from any economy treatment in relation to the establishment, expansion and operation of their investments that is no less favourable than that accorded to investors from any other economy in like situations, without prejudice to relevant international obligations and principles.”</li> <li>• Solomon Islands is a signatory to GATS. Article II requires Solomon Islands to immediately and unconditionally afford to service and service suppliers of other Members no less favorable than it accords to the services or service suppliers of any other country.</li> <li>• Solomon Islands indicated that subject to progress made within the Melanesian Spearhead Group, limitations on the establishment of service providers, including restrictions on foreign investment and land acquisition, may be partially or fully waived for MSG member states (GATS/EL/117). There appear to be no current concessions provided to MSG member states.</li> <li>• Chapter 7, Article 3 provides that with respect to measures covered by the Chapter, each Party shall accord immediately and unconditionally to services and service suppliers of another Party treatment no less favourable than that it accords to like services and service suppliers of a non-party.</li> <li>• Chapter 9, Article 7 of PACER Plus includes a commitment by parties to accord to investors and their investments of any other Party to the Agreement treatment no less</li> </ul>

#	Scoring Criteria	Max	Score	Assessment
				<p>favorable than it accords, in like circumstances, to investors of a non-party or to their investments with respect to the acquisition, establishment, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.</p> <ul style="list-style-type: none"> <li>○ Solomon Islands has listed MFN exemptions in Annex I to facilitate management of existing trade agreements, management of existing and future measures involving aviation, fisheries, and maritime matters, management of regional integration, management of cultural industries, management of law enforcement, correctional and other social services, and management of core government functions.</li> <li>● There do not appear to be any policies or legislation in place that discriminate between foreign investors based on their nationality.</li> </ul>
<b>3. Fair and equitable treatment</b>				
3.1	Investment law includes a commitment of fair and equitable treatment that includes reference to the minimum standard of international law, and guarantees investors will not be subject to unreasonable or discriminatory measures and will have equal access to due process of law.	1.50	0.00	<ul style="list-style-type: none"> <li>● The FIA does not explicitly provide any guarantee of fair and equitable treatment to investors.</li> <li>● The Solomon Islands Constitution provides for several relevant protections: <ul style="list-style-type: none"> <li>○ protection of deprivation of property (s 8)</li> <li>○ protection for privacy of home and other property (s 9)</li> <li>○ secure protection of law (s 10)</li> </ul> </li> <li>● Section 17 of the Constitution provides that a person whose rights or freedoms under Chapter II have been contravened shall be entitled to compensation for the contravention from the person or authority with contravened it.</li> <li>● Article 9, Chapter 9 of PACER Plus, which Solomon Islands ratified in June 2020 and entered into force in December 2020, includes a commitment to fair and equitable treatment and full protection and security in regard to investors and their investments of any other party to the Agreement.</li> </ul>
<b>4. Expropriation</b>				
4.1	Investment law includes a commitment ensuring investors will not be subject to direct expropriation or measures with a similar effect, except for a public purpose, in a non-discriminatory way in accordance with laws and procedures, and subject to prompt, adequate, and effective compensation.	1.50	1.50	<ul style="list-style-type: none"> <li>● Section 29(3) of the FIA states that the law of Solomon Islands shall, in relation to foreign investors who conduct investment activities, be administered in a manner that promotes specified guarantees. <ul style="list-style-type: none"> <li>○ Schedule 2 of the FIA refers to “Member economies will not expropriate foreign investments or take measures that will have a similar effect, except for a public purpose and on a non-discriminatory basis, in accordance with the laws of each economy and principles of international law, and against the prompt payment of adequate and effective compensation.”</li> </ul> </li> <li>● Section 35 of the FIA provides that if, because of the application of a provision of or under the FIA, a person’s interest in or right over property is compulsory acquired, the person is entitled to be paid reasonable compensation.</li> </ul>
<b>5. Convertibility and repatriation of funds</b>				
5.1	Investment law guarantees free and prompt transfer of funds related to foreign investment in a freely convertible currency.	1.00	1.00	<ul style="list-style-type: none"> <li>● Section 29(3) of the FIA states that the law of Solomon Islands shall, in relation to foreign investors who conduct investment activities, be administered in a manner that promotes specified guarantees.</li> <li>● Schedule 2 of the FIA refers to “Member economies will further liberalise towards the goals of free and prompt transfer of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidations, in freely convertible currency.”</li> </ul>
5.2	Host country does not impose any restrictions on the free and prompt transfer of funds, or if it	0.50	0.50	<ul style="list-style-type: none"> <li>● Currency control and exchange is a responsibility of the Central Bank of Solomon Islands (CBSI) under the Exchange Control Act 1976, Exchange Control (Foreign Exchange) Regulations 1977, and the Exchange Control Policy. CBSI has appointed commercial banks as ‘authorised dealers’ for foreign exchange purposes.</li> </ul>



#	Scoring Criteria	Max	Score	Assessment
	does, these exceptions are identified.			<ul style="list-style-type: none"> <li>Foreign currency transactions are available for current payments such as imports, services, management fees, commissions etc. Applications must be submitted to authorised dealers.</li> <li>No restriction is currently placed on remittance of dividends, profits and other earnings (net of tax) due to non-residents. Applications must be submitted to CBSI for authorization.</li> </ul>
<b>6. Dispute settlement</b>				
6.1	The country has ratified (and, where applicable to the country's legal system, domestically enacted) international conventions for settlement of investment disputes:	1.50	0.75	<ul style="list-style-type: none"> <li>The Arbitration Act 1987 provides for arbitration in Solomon Islands.</li> </ul>
(a)	Convention on the Settlement of Investment Disputes between states and nationals of other states (ICSID); and	0.75	0.75	<ul style="list-style-type: none"> <li>Section 28(1) of the FIA provides that the law of Solomon Islands applies to disputes involving foreign investors who conduct investment activities. Section 28 provides that to the extent that the Convention of Settlement of Investment Disputes is not inconsistent with the law of Solomon Islands, it applies to, and shall be complied with by, foreign investors who conduct investment activities as a law of Solomon Islands.</li> </ul>
(b)	New York Convention on Recognition and Enforcement of Arbitral Awards.	0.75	0.00	<ul style="list-style-type: none"> <li>Solomon Islands is not a signatory to the New York Convention.</li> </ul>
<b>7. Investor behavior</b>				
7.1	Investment law includes a requirement that foreign investors:	1.00	1.00	
(a)	comply with all domestic laws and regulations; and	0.50	0.50	<ul style="list-style-type: none"> <li>Section 12(2)(a) of the FIA clarifies that the requirement to register an investment activity is in addition to requirements in respect of investment activities under any other law of Solomon Islands.</li> </ul>
(b)	provide periodic statistical reports concerning their operations.	0.50	0.50	<ul style="list-style-type: none"> <li>Section 7 of the FIA requires foreign investors conducting investment activities to complete an annual survey about the conduct of the investment activity in Solomon Island during the financial year. The form of the annual survey is provided for in the Foreign Investment Regulations 2006.</li> </ul>
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>6.25</b>	<b>MODERATE</b>

### 3. Foreign Investor Residence in Country

#	Scoring Criteria	Max	Score	Assessment
<b>1. Screening approach</b>				
1.1	Country has a temporary residence permit for investors / businesspersons available to:	2.00	0.00	<ul style="list-style-type: none"> <li>Solomon Islands requires both immigrant investors and designated representatives to obtain a separate work permit and residence permit.</li> </ul>
(a)	owners of a registered foreign investment (immigrant investors) without the need to apply for a separate work permit; and	1.00	0.00	<ul style="list-style-type: none"> <li>The Labour Act [Cap 73] governs the issuance of work permits to non-indigenous workers. Section 37 of the Labour Act requires both employed and self-employed non-indigenous workers to have a work permit. The Work Permit Rules 1985 provide additional details.</li> <li>Section 10 of the Immigration Act 2012 provides that a person who is a non-citizen (and not an exempt person) must not enter or stay in Solomon Islands without holding a visa that is in force. Section 17 provides for several visa categories including employment and investors.</li> </ul>
(b)	designated representatives / intra-company transfers of a registered overseas-based investment without the need to apply for a separate work permit.	1.00	0.00	
1.2	If 1.1(a) and/or (b) is met, then the temporary residence permit is:	3.50	0.00	<ul style="list-style-type: none"> <li>Solomon Islands does not meet the requirements of 1.1(a) or 1.1(b). While work permits are not required to be provided for investment visa purposes; in practice MCILI has been requiring investors to seek work permits.</li> </ul>
(a)	administered solely by the immigration authority and issued without approvals or support from other authorities (excluding FDI entry requirements); and	0.50	0.00	<ul style="list-style-type: none"> <li>Section 12 of the Immigration Act provides that the Director of Immigration may, upon application in the prescribed form, grant a non-citizen a visa if the Director is satisfied that the non-citizen meets the prescribed requirements for the visa.</li> <li>There are three types of visas relevant for investment purposes: <ul style="list-style-type: none"> <li>Provisional investment visa.</li> <li>Established investor visa.</li> <li>Long-term employment visa.</li> </ul> </li> <li>Among other requirements, investment visas require potential resident investors to demonstrate a minimum commitment to investment over 12 months to achieve the relevant points for a provisional investor visa. The minimum number of points required is five.</li> </ul>

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#	Scoring Criteria	Max	Score	Assessment																				
				<table border="1"> <thead> <tr> <th>Core points</th> <th>Points available</th> </tr> </thead> <tbody> <tr> <td>Commitment to capital investment of at least SBD 7 million in the first 12 months</td> <td>4</td> </tr> <tr> <td>Commitment to capital investment of between SBD 2–7 million in the first 12 months</td> <td>3</td> </tr> <tr> <td>Commitment to capital investment of between SBD 1–2 million in the first 12 months</td> <td>2</td> </tr> <tr> <th>Bonus points</th> <th>Points available</th> </tr> <tr> <td>Demonstrated capital available (liquid assets) of at least SBD 2 million in first 12 months</td> <td>1</td> </tr> <tr> <td>Demonstrated previous record of successful business activity</td> <td>1</td> </tr> <tr> <td>Possession of qualification/s relevant to the proposed investment activity</td> <td>1</td> </tr> <tr> <td>Demonstrated experience relevant to the proposed investment activity</td> <td>1</td> </tr> <tr> <td>Existence of a plausible business plan for the proposed investment activity</td> <td>1</td> </tr> </tbody> </table>	Core points	Points available	Commitment to capital investment of at least SBD 7 million in the first 12 months	4	Commitment to capital investment of between SBD 2–7 million in the first 12 months	3	Commitment to capital investment of between SBD 1–2 million in the first 12 months	2	Bonus points	Points available	Demonstrated capital available (liquid assets) of at least SBD 2 million in first 12 months	1	Demonstrated previous record of successful business activity	1	Possession of qualification/s relevant to the proposed investment activity	1	Demonstrated experience relevant to the proposed investment activity	1	Existence of a plausible business plan for the proposed investment activity	1
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(b)	issued according to the following decision criteria:	2.00	0.00																					
	(i) only checks ensuring that the foreign investment has successfully met FDI entry requirements, the person has a valid passport and passes objective character and health tests and has a minimum amount of funds for residence; or	2.00	0.00	<ul style="list-style-type: none"> <li>• There are also a range of conditions that apply to each visa category: <ul style="list-style-type: none"> <li>○ Standard requirements for all visas (Regulation 8(1), Immigration Regulations 2013): <ul style="list-style-type: none"> <li>▪ Standard requirement 1: if an application form is prescribed for the visa in the circumstances that apply to the person: a) the person applies for the visa using that application form, b) the application is given to an immigration officer, c) the application fee prescribed in the Immigration (Fees) Regulations for that visa is paid, d) if there is a conversion fee prescribed for the circumstances in which the application is made in the Immigration (Fees) Regulations, that conversion fee is paid.</li> <li>▪ Standard requirement 2: the Director is satisfied that there is no reason to believe that there is a character concern about the person within the meaning of Section 23 of the Act.</li> <li>▪ Standard requirement 3: the Director is satisfied that there is not a serious health concern about the person within the meaning of Section 24 of the Act.</li> <li>▪ Standard requirement 4: the Director is satisfied that no restriction period applies to the person under Section 42 of the Act.</li> <li>▪ Standard requirement 5: the Director is satisfied that the application bar in Regulation 9 does not apply to the person.</li> <li>▪ Standard requirement 6: the Director is satisfied that the person has satisfied any financial liability arising under this Act.</li> <li>▪ Standard requirement 7: the application complies with the onshore change of status rules made under Section 18(2) of the Act if a) the application is made in Solomon Islands by a person who is already the holder of a visa, and b) the application is for a visa of another class.</li> </ul> </li> <li>○ Specific requirements for provisional investment visas (Regulation 37, Immigration Regulations): <ul style="list-style-type: none"> <li>▪ The assessing officer is satisfied that the applicant is, or has an interest in, a foreign investor in relation to an investment activity that is registered under the FIA.</li> </ul> </li> </ul> </li> </ul>																				
	(ii) meets the requirements of (i), plus the enterprise must satisfy a minimum investment threshold; or	1.50	0.00																					
	(iii) meets the requirements of (i), plus meet a range of additional, investor-specific requirements; and	0.50	0.00																					
(c)	processed in accordance with a statutory processing period of 20 working days or less.	1.00	0.00																					

#	Scoring Criteria	Max	Score	Assessment
				<ul style="list-style-type: none"> <li>▪ The assessing officer is satisfied that the activity will involve investment in Solomon Islands of at least SBD 1 million in the first 12 months of the activity.</li> <li>▪ The assessing officer is satisfied that the applicant passes the points test.</li> <li>▪ The Director is satisfied that no other person holds a provisional investor visa or an established investor visa in relation to the same activity.</li> <li>▪ The applicant has lodged an undertaking in the form approved by notice published in the Gazette by the Director to provide information specified in the form in relation to the investment activity.</li> </ul> <ul style="list-style-type: none"> <li>○ Specific requirements for established investor visas (Regulation 43, Immigration Regulations): <ul style="list-style-type: none"> <li>▪ The applicant is the holder of a provisional investor visa or an established investor visa in relation to an investment activity that is registered under the Foreign Investment Act 2005.</li> <li>▪ The applicant is conducting an investment activity that meets the requirements of Regulation 43(3).</li> <li>▪ The applicant has complied with the terms and conditions of the visa the applicant currently holds.</li> <li>▪ The Director is satisfied that the investment activity being conducted by the applicant is continuing to operate.</li> <li>▪ The Director is satisfied that the applicant has maintained and continues to maintain a management interest in the investment activity being conducted.</li> </ul> </li> <li>○ Specific requirements for long-term employment visas (Regulation 32, Immigration Regulations): <ul style="list-style-type: none"> <li>▪ There is an approved sponsor for the applicant.</li> <li>▪ The Director is satisfied that the employment is genuine.</li> <li>▪ The applicant holds a work permit granted by the Commissioner for Labour under the Labour Act.</li> </ul> </li> </ul> <ul style="list-style-type: none"> <li>• Solomon Islands does not have statutory processing times.</li> </ul>
<b>2. Duration of investor residence permit</b>				
2.1	Investor-class temporary residence permits are issued using a two-stage process: (a) initially for a period sufficient to enable the investor to demonstrate they have successfully established themselves, such as 1 year, and then (b) once establishment has been verified, for longer periods.	1.00	1.00	<ul style="list-style-type: none"> <li>• Solomon Islands adopts a two-stage system for potential investors.</li> <li>• Visas are issued for the following periods: <ul style="list-style-type: none"> <li>○ Provisional investor visa: maximum 2 years (Regulation 39(3), Immigration Regulations).</li> <li>○ Established investor visa: maximum 5 years (Regulation 44(3), Immigration Regulations).</li> </ul> </li> <li>• Long-term employment visa: 2 years (Regulation 33(3), Immigration Regulations).</li> </ul>
2.2	Foreign investors associated with established foreign investments may eventually apply for residence permits with duration of at least 5 years.	2.00	2.00	<ul style="list-style-type: none"> <li>• Established investment visas are available for a maximum of 5 years.</li> <li>• Permanent residency is not offered in Solomon Islands.</li> </ul>
<b>3. Resident permit fee</b>				
3.1	Total temporary residence permit cost for a foreign investor over a 5-year period:	1.50	1.50	<ul style="list-style-type: none"> <li>• The total temporary residence permit cost over 5 years is SBD 7,450 (~USD 920), comprising:</li> </ul>

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(a)	less than USD 1,000; or	1.50	1.50	<ul style="list-style-type: none"> <li>The total potential maximum fee for two 2-year work permits and a 1-year work permit of SBD 2,850 (~USD 350).</li> </ul>
(b)	USD 1,001 – USD 2,000.	0.75	0.00	<ul style="list-style-type: none"> <li>The total maximum fee for a provisional investor visa of SBD 2,300 (~USD 285).</li> <li>The total maximum fee for an established investor visa of SBD 2,300 (~USD 285).</li> </ul>
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>4.50</b>	<b>WEAK</b>

## 4. Foreign Direct Investment Monitoring and Reporting

#	Scoring Criterion	Max	Score	Assessment
<b>1. Tracking FDI across government</b>				
1.1	Government regulators have the ability to efficiently communicate with one another about foreign investors through the use of unique business identifiers.	1.50	0.00	<ul style="list-style-type: none"> <li>Unique business identifiers are not in use.</li> </ul>
<b>2. Monitoring and enforcement</b>				
2.1	Transparent criteria define when an FDI is considered established.	0.75	0.00	<ul style="list-style-type: none"> <li>Section 23(1)(b) of the FIA provides that the Registrar may cancel a certificate of registration if the foreign investor has not commenced conducting an investment activity within 12 months of receiving approval.</li> <li>Neither the FIA nor the FI Regulations provide criteria to determine when an investment is considered established.</li> <li>In practice, the Registrar assesses investments on a case-by-case basis, with an emphasis on investors obtaining all relevant licences within 12 months of approval. However, exceptions are made for investments requiring lengthier or more complex approvals.</li> </ul>
2.2	Regulators have legislated inspection powers to determine if the conditions of FDI registration/visas are being breached.	0.75	0.00	<p><b>FDI Registration</b></p> <ul style="list-style-type: none"> <li>The FIA does not grant the regulator any powers of inspection.</li> <li>Offences and penalties under the FIA are relatively limited and only apply to: <ul style="list-style-type: none"> <li>Failing to inform change of details (Section 22(3)).</li> <li>Providing false or misleading statements (Section 32).</li> <li>Disclosing or improperly using information (Section 33).</li> </ul> </li> </ul> <p><b>Work Permits</b></p> <ul style="list-style-type: none"> <li>The Labour Act [Cap 73] provides for the ability for the Commissioner or Health Officer to investigate potential breaches of the Act.</li> </ul> <p><b>Visas</b></p> <ul style="list-style-type: none"> <li>Part 6 of the Immigration Act 2012 provides officers with extensive powers to investigate potential offences under the Act.</li> </ul>
2.3	Offences and penalties are specified in legislation and:	0.50	0.25	<ul style="list-style-type: none"> <li>The FIA does not provide for offences and penalties for all specified requirements.</li> <li>The FIA explicitly provides for the following offences: <ul style="list-style-type: none"> <li>Failing to notify the Registrar of changes to specified investment activity information required by Sections 22(3) and 22(4).</li> <li>Knowingly providing false or misleading statements in a material particular a) in connection with an application, report, record, form, certificate, or other document made, filled in, or kept under the FIA, or b) otherwise in connection with the operation of FIA Section 32.</li> <li>Disclosing or improperly using information in connection with administration of the FIA as per Section 33.</li> </ul> </li> </ul>
(a)	address all legislated requirements; or	0.50	0.00	
(b)	address some but not all legislated requirements.	0.25	0.25	

#	Scoring Criterion	Max	Score	Assessment
				<ul style="list-style-type: none"> <li>As such, undertaking an investment activity without a foreign investment certificate is not, in and of itself, an offence.</li> <li>Other breaches of the FIA, such as conducting a prohibited or reserved activity, can result in cancellation of a certificate under FIA Section 23(1).</li> </ul>
2.4	Regulators proactively monitor:	2.00	2.00	<ul style="list-style-type: none"> <li>The FID is responsible for the monitoring of foreign investors.</li> <li>FID has two officers dedicated to monitoring and enforcement.</li> </ul>
(a)	FDI to ensure establishment requirements are met; and	1.00	1.00	<ul style="list-style-type: none"> <li>FID runs an annual program of awareness and training for targeted sectors, based on reports of noncompliance, including in relation to annual return requirements.</li> </ul>
(b)	FDI compliance with registration and residence visa requirements.	1.00	1.00	<ul style="list-style-type: none"> <li>FID participates in joint inspections of foreign-owned businesses with other government authorities responsible for business compliance including immigration, tax, and labor standards.</li> <li>Regular joint inspections are run throughout all provinces of Solomon Islands.</li> </ul>
<b>3. Appeals</b>				
3.1	Foreign investors have the right to appeal FDI registration decisions, including:	1.00	1.00	<ul style="list-style-type: none"> <li>Section 27(1) of the FIA provides that applicants who have had their applications refused or their certificates cancelled may apply to the Investment Facilitation Committee for a review of the Registrar's decision.</li> <li>Section 27(2) of the FIA provides that the foreign investor must apply to the committee for the review within 1 month of refusing the relevant decision.</li> <li>Section 27(4) provides that the committee shall, within 2 months of receiving the application, conduct and determine the review.</li> </ul>
(a)	denial of an application; and	0.50	0.50	<ul style="list-style-type: none"> <li>Section 27(9) provides that the Registrar or foreign investor may appeal against the committee's decision to the High Court on an error of law.</li> <li>The appeal fee is SBD 500.</li> <li>The processing time is up to 2 months (legislative).</li> </ul>
(b)	revocation of registration.	0.50	0.50	
3.2	Foreign investors have the right to appeal residence permit decisions, including:	1.00	1.00	<ul style="list-style-type: none"> <li>Section 90(1) of the FIA provides that a person who is aggrieved by a reviewable decision may apply for a review of the decision.</li> <li>Section 90(3)(b) of the FIA provides that decisions made by the Director must be appealed to the minister. Decisions concerning long-term employment visas and classes of investor visa are decided by the Director.</li> <li>Section 90(5) of the FIA provides that the Director or minister must consider an application and must decide, before the end of the prescribed period, whether to: <ul style="list-style-type: none"> <li>affirm the decision; or</li> <li>replace the decision with a new decision; or</li> <li>return the matter to the original decision maker and request they decide again.</li> </ul> </li> <li>Section 90(6) of the FIA provides that the Director or minister must give the applicant written notice of the decision and, if the decision is not favorable to the applicant, the reasons for that decision, within 2 days. If the director makes a decision in the applicant's favor or in any case, the Minister makes a decision.</li> <li>Section 90(7) provides that if the Director makes a decision that is not in the applicant's favor, the Director must, as soon as practicable, refer the Director's decision to the minister, together with the original application for review. The minister must, in accordance with subsection (5), consider the Director's decision as if the original application were an application for review of the Director's decision.</li> </ul>
(a)	denial of application; and	0.50	0.50	<ul style="list-style-type: none"> <li>In the context of residency for investment purposes, appeals in relation to a refusal to grant a visa are:</li> </ul>

#	Scoring Criterion	Max	Score	Assessment
(b)	revocation of residence permit.	0.50	0.50	<ul style="list-style-type: none"> <li>○ Provisional investor and established investor visa classes: not reviewable because the visa classes do not require an approved sponsor (Section 90(2)(a)(i) of the FIA, and Immigration Regulations 2013, Division 7 and Division 8).</li> <li>○ Long-term employment visas: reviewable because a condition of the visa involves having an authorized sponsor (Immigration Regulations 2013, r 32(1)(a)).</li> <li>• In the context of residency for investment purposes, appeals in relation to cancellation of an existing visa are: <ul style="list-style-type: none"> <li>○ Provisional investors and established investor visa classes: reviewable.</li> <li>○ Long-term employment visas: reviewable.</li> </ul> </li> </ul>
<b>4. Reporting</b>				
4.1	Non-commercially sensitive information about a registered foreign investment's ownership and investment activities is:	1.50	1.50	<ul style="list-style-type: none"> <li>• Section 6 of the FIA requires the Registrar to keep a Register of Investment Activities Conducted by Foreign Investors.</li> <li>• Regulation 3 of the FI Regulations prescribes the following information to be recorded on the Register: <ul style="list-style-type: none"> <li>○ A description of the investment activity.</li> <li>○ The name of the foreign investor conducting the investment activity.</li> <li>○ The business name (if any) under which the foreign investor conducts or will conduct the investment activity.</li> <li>○ the date the Registrar registers the investment activity and the reference number of the certificate of registration issued in respect of the investment activity.</li> <li>○ The details of any amendments to the certificate of registration and the date of the amendments.</li> <li>○ Whether the certificate of registration is cancelled and the date of the cancellation.</li> <li>○ The surrender of the certificate of registration (if any) and the date the certificate is surrendered.</li> </ul> </li> </ul>
(a)	available online; or	1.50	1.50	<ul style="list-style-type: none"> <li>• The Register is freely available at <a href="http://www.solomonbusinessregistry.gov.sb">www.solomonbusinessregistry.gov.sb</a>.</li> <li>• Information available includes: <ul style="list-style-type: none"> <li>○ Investment details: <ul style="list-style-type: none"> <li>▪ Foreign investment certificate number.</li> <li>▪ Status.</li> <li>▪ Registration date.</li> <li>▪ Organization type.</li> <li>▪ Organization name.</li> <li>▪ Organization number.</li> </ul> </li> <li>○ Investors: <ul style="list-style-type: none"> <li>▪ Individual investor name and nationality.</li> <li>▪ Local representative details.</li> </ul> </li> <li>○ Business activities: <ul style="list-style-type: none"> <li>▪ Main business sector.</li> </ul> </li> <li>○ Operating locations: <ul style="list-style-type: none"> <li>▪ Principal business location address.</li> <li>▪ Additional business location address.</li> </ul> </li> <li>○ Filings.</li> </ul> </li> </ul>
(b)	only available through requests to the regulator.	0.50	0.00	
4.2	Periodic FDI reports address the following:	1.50	0.25	<ul style="list-style-type: none"> <li>• Section 8 of the FIA requires the Registrar to, within 4 months of the end of the financial year, make a report on the administration of the FIA, and the conduct of investment</li> </ul>



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#	Scoring Criterion	Max	Score	Assessment
(a)	make up of FDI in the country; and	0.25	0.25	<p>activities by foreign investors in Solomon Islands. This report is sent to the minister to lay a copy before Parliament as soon as practicable.</p> <ul style="list-style-type: none"> <li>• In practice, the report required by the FIA is incorporated into the MCILI annual report.</li> <li>• The annual report includes information concerning the make-up of FDI in Solomon Islands.</li> </ul>
(b)	extent to which investment actually occurs; and	0.25	0.00	<ul style="list-style-type: none"> <li>• Information on the extent to which information actually occurs is not reported.</li> </ul>
(c)	actual impacts associated with FDI.	1.00	0.00	<ul style="list-style-type: none"> <li>• Information on the actual impacts associated with FDI are not reported.</li> </ul>
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>6.00</b>	<b>MODERATE</b>

## 5. Investment Promotion

#	Scoring Criterion	Max	Score	Assessment
<b>1. Strategic approach to investment</b>				
1.1	IPI is guided by clear and realistic goals against which the IPI's performance is managed.	2.00	0.00	<ul style="list-style-type: none"> <li>The Solomon Islands Government has not endorsed a set of quantifiable FDI goals.</li> <li>MCILI is currently in the process of developing a foreign investment policy which may include quantifiable goals.</li> </ul>
1.2	IPI has its services driven by a written, multi-year investment promotion strategy.	2.00	0.00	<ul style="list-style-type: none"> <li>MCILI does not have a current investment strategy.</li> <li>Priority sectors for investment promotion are currently identified and/or inferred from other government policies. Current sectors including agriculture, fisheries, tourism, and downstream processing.</li> </ul>
<b>2. Organizational form</b>				
2.1	IPI is an:	1.50	1.00	<ul style="list-style-type: none"> <li>IPI functions are undertaken by the Investment Promotion Unit which sits under the Foreign Investment Division. FID has three units:                             <ul style="list-style-type: none"> <li>Investment promotion (two staff): responsible for dissemination of information through the website and networking; information and publicity; research and data collection; workshops, seminars, and meetings; identification of investment opportunities.</li> <li>Investment facilitation and registration (two staff): implementation of investment laws and regulations; foreign investment regulation.</li> </ul> </li> <li>Investment monitoring (two staff): review of approved investors; maintenance of investor survey.</li> </ul> <p>MCILI is responsible for a broad range of areas including industrial development, business and cooperatives development, marketing and export promotion, consumer affairs and price control, business registration, immigration, labor regulation, and supporting the trade disputes panel.</p>
(a)	autonomous agency; or	1.50	0.00	
(b)	integral unit of a major ministry; or	1.00	1.00	
(c)	sub-unit of a major ministry.	0.50	0.00	
2.2	IPI has access to private sector experience in an oversight or advisory role:	0.50	0.00	<ul style="list-style-type: none"> <li>MCILI does not have private sector oversight in its investment promotion activities. FID is accountable the Permanent Secretary of MCILI.</li> <li>Section 25 of the FIA establishes the Investment Facilitation Committee whose purpose is to:                             <ul style="list-style-type: none"> <li>Facilitate foreign investors who hold certificates of registration, as well as domestic investors to conduct their investments in Solomon Islands.</li> <li>Review decisions of the Registrar to refuse to register an investment activity or to cancel a certificate of registration.</li> </ul> </li> <li>Regulation 10 of the Foreign Investment Regulations provides that the membership of the Investment Facilitation Committee comprises:                             <ul style="list-style-type: none"> <li>The Minister for Commerce, Industry, Labour, and Immigration.</li> <li>The Minister for Finance and Treasury.</li> <li>The Governor of the Central Bank of Solomon Islands.</li> <li>The Permanent Secretary of MCILI.</li> </ul> </li> </ul>
(a)	board has at least 40% private sector representation; or	0.50	0.00	
(b)	board has some private sector representation.	0.25	0.00	
<b>3. IPI functions</b>				
3.1	IPI's role is:	1.00	0.00	

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#	Scoring Criterion	Max	Score	Assessment
(a)	limited solely to providing investment promotion services; or	1.00	0.00	<ul style="list-style-type: none"> <li>FID has a dual regulatory and investment promotion role.</li> <li>FID's responsibilities include foreign investment regulation and monitoring and investment facilitation and registration, in addition to investment promotion.</li> </ul>
(b)	broader than investment promotion but does not involve regulatory responsibilities such as FDI monitoring and enforcement.	0.50	0.00	<ul style="list-style-type: none"> <li>The Investment Promotion Unit is limited to providing investment facilitation services.</li> </ul>
<b>4. IPI activities</b>				
4.1	IPI maintains an investment promotion website with the following up to date information:	1.10	0.20	<ul style="list-style-type: none"> <li>FID hosts information concerning investment in Solomon Islands on two main websites: the <a href="http://www.solomonbusinessregistry.gov.sb">www.solomonbusinessregistry.gov.sb</a> site, and the MCILI site.</li> </ul>
(a)	National Investment Policy Statement; and	0.30	0.00	<ul style="list-style-type: none"> <li>A National Investment Policy Statement is not available on FID-hosted websites.</li> </ul>
(b)	key business start-up and operational requirements; and	0.10	0.00	<ul style="list-style-type: none"> <li>Some business start-up information is available on the Solomon Business Registry website; however, this information is incomplete and largely geared towards how to apply through the online registry. Information concerning matters such as business licensing and tax registration is not included.</li> </ul>
(c)	strengths of the country as an investment destination; and	0.10	0.10	<ul style="list-style-type: none"> <li>Information on the strengths of the country as an investment destination is available on the MCILI website.</li> </ul>
(d)	business cost data; and	0.20	0.00	<ul style="list-style-type: none"> <li>Business cost data is not available on FID-hosted websites.</li> </ul>
(e)	business conditions within priority sectors and potential areas for investment; and	0.20	0.00	<ul style="list-style-type: none"> <li>Key sectors for investment are identified on the Solomon Business Registry website; however, no information concerning business conditions is available.</li> </ul>
(f)	investor testimonials; and	0.10	0.00	<ul style="list-style-type: none"> <li>Investor testimonials are not available on FID-hosted websites.</li> </ul>
(g)	contact details.	0.10	0.10	<ul style="list-style-type: none"> <li>Contact details are available on FDI-hosted websites.</li> </ul>
4.2	IPI provides facilitation services:	0.60	0.40	<ul style="list-style-type: none"> <li>FID provides investor facilitation services through two full-time staff, although other FID staff are able to provide support if the volume of requests exceeds ordinary resources.</li> </ul>
(a)	protocols in place enabling prompt response to investor inquiries; and	0.20	0.20	<ul style="list-style-type: none"> <li>Internal targets are to deal with incoming inquiries within 5 working days of receipt.</li> </ul>
(b)	account managers facilitate investments in priority sectors; and	0.20	0.20	<ul style="list-style-type: none"> <li>Incoming requests for assistance are divided between the two account managers, roughly on the basis of sector.</li> </ul>
(c)	proactive support provided to investments in priority sectors.	0.20	0.00	<ul style="list-style-type: none"> <li>Proactive support is provided to priority sectors and sectors that demonstrate lower levels of compliance through the FID information and awareness program. This support is primarily geared towards compliance rather than investment assistance.</li> </ul>
4.3	IPI regularly undertakes advocacy across government to improve the investment climate.	0.30	0.00	<ul style="list-style-type: none"> <li>FID does not regularly undertake advocacy across government to improve Solomon Islands' investment climate.</li> </ul>
<b>5. Streamlined online approvals</b>				
5.1	Investors have the ability to complete investment	1.00	0.60	

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#	Scoring Criterion	Max	Score	Assessment
(a)	approvals through electronic systems for: foreign investment certification; and	0.20	0.20	<ul style="list-style-type: none"> <li>Foreign investment certification can be completed through the Solomon Business Registry website.</li> </ul>
(b)	company registration; and	0.20	0.20	<ul style="list-style-type: none"> <li>Company registration can be completed through the Solomon Business Registry website.</li> </ul>
(c)	business names registration (if applicable); and	0.20	0.20	<ul style="list-style-type: none"> <li>Business names registration can be completed through the Solomon Business Registry website.</li> </ul>
(d)	tax registration; and	0.20	0.00	<ul style="list-style-type: none"> <li>Tax registration is completed through the Internal Revenue Division of the Ministry of Finance, and cannot be completed online.</li> </ul>
(e)	business licences.	0.20	0.00	<ul style="list-style-type: none"> <li>Business licences are the responsibility of provincial governments, and cannot be completed online.</li> </ul>
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>2.20</b>	<b>WEAK</b>

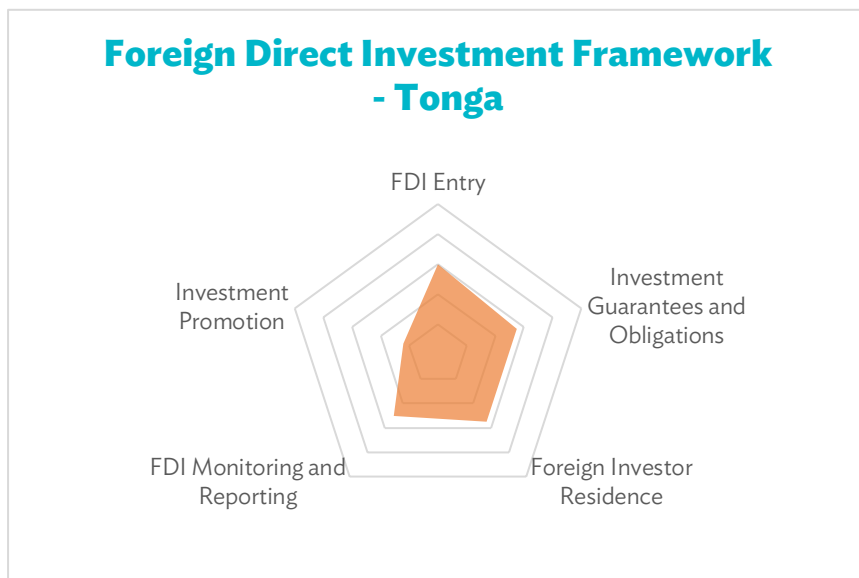
## 6. Reserved Activities

### Foreign Investment (Amendment) Regulation 2020, Schedule 3 RESERVED ACTIVITIES

No.	Activity
1	Cultivating plant crops for sale on the domestic market
2	Timber milling operations producing not more than 5,000m <sup>3</sup> of sawn timber per year
3	Retail trading of household and general goods and services
4	Producing handcrafts and cultural artefacts
5	Operating buses, taxis, and hire car services
6	Farming livestock for sale on the domestic market
7	Gathering of wild forest products for sale on the domestic market
8	Laundry services that are not part of the operations of a hotel
9	Cafes and other eating and drinking businesses operating in buildings the area of which is less than 200m <sup>2</sup>
10	Market vending and roadside stalls
11	Domestic help services
12	Static security guarding services which employ less than 50 persons and which provide security services for offices and domestic dwellings
13	Office cleaning and lawn mowing services that are not part of the operations of a hotel
14	Customs clearing agent
15	Gathering uncultivated natural products, including uncultivated forest materials, and using traditional knowledge to create traditional herbs for custom medicines for sale on the domestic and overseas markets
16	Coastal or reef fishing for sale on the domestic market as follows: <ul style="list-style-type: none"> <li>a. fishing on a commercial basis in coastal and inland waters within 3 miles of the shoreline and on rivers and lakes</li> <li>b. taking marine or freshwater crustaceans and molluscs</li> <li>c. taking any of the following: <ul style="list-style-type: none"> <li>i. aquatic animals</li> <li>ii. sea squids and other tunicates</li> <li>iii. sea urchins and other echinoderms</li> <li>iv. other aquatic vertebrates</li> </ul> </li> <li>d. gathering marine materials such as natural pearls, sponges, coral, and algae</li> <li>e. conducting small-scale live fish farming, including fish hatcheries, and fish farm service activities</li> </ul>
17	Bungalow, eco-lodge, and homestay accommodation which has less than 10 beds
18	Local bird sanctuaries and marine aquarium zoos
19	Hair and beauty product distribution and salon services

No.	Activity
20	Driving school services
21	Wholesale and retail trading of second-hand clothing

## Country Assessment Matrix: Tonga



Factor	Alignment
FDI Entry	MODERATE
Investment Guarantees and Obligations	MODERATE
Foreign Investor Residence	MODERATE
FDI Monitoring and Reporting	MODERATE
Investment Promotion	WEAK

## 1. Foreign Direct Investment Entry

#	Scoring Criteria	Max	Score	Assessment
<b>1. FDI Screening</b>				
1.1	General screening	5.00	0.00	
(a)	FDI is not separately screened and foreign investors are required to comply with business registration requirements like a citizen-owned business; or	3.50	0.00	<ul style="list-style-type: none"> <li>The Foreign Investment Act 2020 (FIA) requires additional registration for foreign enterprises to conduct business activities in Tonga.</li> </ul>
(b)	additional FDI registration is required:	1.75	1.25	
(i)	relevant processes and assessment criteria are up-to-date, outlined in detail, and made readily accessible to investors; and	0.25	0.00	<ul style="list-style-type: none"> <li>Tonga does not codify detailed information concerning how FDI certification applications are made.</li> <li>The Tonga Trade Portal provides a checklist for applications; however, it does not explain the decision-making process.</li> </ul>
(ii)	registration applies to investments with any level of direct foreign ownership; and	0.25	0.25	<ul style="list-style-type: none"> <li>Foreign investment certification applies to all levels of foreign ownership in Tonga. Section 4 of the FIA allows an “overseas person” to carry on a “business activity”, unless the activity is prohibited, reserved, or subject to restrictions. Section 6 defines an “overseas person” in broad terms which effectively capture any degree of foreign ownership.</li> </ul>
(iii)	registration criteria are objective and limited to ensuring that proposed investments are consistent with pre-determined reserved/restricted lists and the investor(s) is not breaching disqualification criteria; and	0.25	0.25	<ul style="list-style-type: none"> <li>Section 15(4) of the FIA provides that the Registrar shall issue the certificate if they are satisfied:                             <ul style="list-style-type: none"> <li>as to the veracity and completeness of the information required under Section 14; and</li> <li>that the proposed business activity is not a prohibited or reserved activity; and</li> <li>that, in the case of a proposed business activity that is a restricted activity, the activity satisfies the relevant conditions prescribed in the Regulations.</li> </ul> </li> </ul>
(iv)	application process requires information limited to investor biographical information; business name; contact details; description of investment and business information; and a brief business plan; and	0.25	0.25	<ul style="list-style-type: none"> <li>The following information is required by the application form:                             <ul style="list-style-type: none"> <li>Foreign investor information:                                     <ul style="list-style-type: none"> <li>Name of foreign investment business or foreign investor (company; natural person).</li> <li>Intended address of foreign investment business (street name; town; island).</li> <li>Authorised/nominated contact person (name, position in foreign investment business; contact details).</li> <li>Nominated mailing address in Tonga (post box; town; island).</li> <li>Ownership structure of foreign business (sole proprietor; partnership; company).</li> </ul> </li> </ul> </li> </ul>



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#	Scoring Criteria	Max	Score	Assessment
	<p>(v) there is a legal obligation for the regulator to keep information disclosed in the application process confidential; and</p> <p>(vi) there is a statutory requirement to be completed within 5 working days; and</p> <p>(vii) approval is open-ended and only needs to be varied for changes in business name, ownership, or investment activities.</p>	<p>0.25</p> <p>0.25</p> <p>0.25</p>	<p>0.00</p> <p>0.25</p> <p>0.25</p>	<ul style="list-style-type: none"> <li>▪ Details of owners (name; date of birth; position; residential address; % of shares; country of citizenship).</li> <li>○ Business activity and investment information: <ul style="list-style-type: none"> <li>▪ Description of business activity (further information required if involved in commercial fishing; agricultural supply, store distributing seeds, fertilizers and chemicals; educational facilities; or medical or health activity).</li> <li>▪ Investment capital information (total value of investment, foreign citizen investment, Tonga citizen investment, and total value of fixed assets of the enterprise).</li> </ul> </li> <li>○ Additional information: <ul style="list-style-type: none"> <li>▪ Current business involvement (details, if any, of the owners are involved in any other foreign investment business in Tonga).</li> <li>▪ Solvency (whether any of the owners are undischarged bankrupts, or in receivership or liquidation under the laws of Tonga or any other country).</li> </ul> </li> <li>○ Statistical information: <ul style="list-style-type: none"> <li>▪ Proposed level of total investment costs (year 1, year 2, year 3).</li> <li>▪ Proposed level of employment (Tongan citizens; foreign citizens).</li> </ul> </li> <li>○ Declaration.</li> </ul> <ul style="list-style-type: none"> <li>• The FIA does not impose an obligation for the regulator to keep information disclosed in the application process confidential.</li> <li>• Section 15(1) of the FIA provides that the Registrar shall determine an application within 5 working days of receiving the application.</li> <li>• Certificates are open ended. Section 21 of the FIA states certificate holders are expected to provide written notice for changes in: <ul style="list-style-type: none"> <li>○ The information that was provided in an application for the issue or transfer of a certificate.</li> <li>○ The business name under which the holder conducts the business activity.</li> <li>○ The location of the business activity.</li> <li>○ The address for service of documents on the holder.</li> </ul> </li> </ul>
1.2	Complex screening used in a few strategic areas:	1.50	1.50	
(a)	no; or	1.50	2.00	<ul style="list-style-type: none"> <li>• Tonga does not impose additional FDI screening.</li> </ul>
(b)	yes:			
(i)	uses transparent procedures and clearly defined timelines; or	1.00	0.00	

#	Scoring Criteria	Max	Score	Assessment
	(ii) does not use transparent procedures and clearly defined timeframes.	0.25	0.00	
<b>2. Investment law general restrictions</b>				
2.1	General minimum investment requirement not imposed	0.25	0.25	<ul style="list-style-type: none"> <li>The FIA does not place other general limitations on FDI, although there is a regulatory power to do so under Section 45(2)(d).</li> </ul>
2.2	General foreign equity restrictions not imposed.	0.25	0.25	<ul style="list-style-type: none"> <li>The FIA does not impose general foreign equity restrictions.</li> </ul>
2.3	General performance requirements not imposed.	0.25	0.25	<ul style="list-style-type: none"> <li>The FIA does not impose general performance requirements.</li> </ul>
<b>3. Investment law sector or activity-specific restrictions</b>				
3.1	Negative list approach is used.	1.00	1.00	<ul style="list-style-type: none"> <li>The FIA uses a negative list approach.</li> </ul>
3.2	Total number of reserved and restricted activities is:	1.00	0.50	<ul style="list-style-type: none"> <li>Regulation 6 and Schedule 1 of the Foreign Investment Regulations 2021 provide for eight reserved activities.</li> <li>Regulation 7 and Schedule 2 of the Foreign Investment Regulations 2021 provide for the three restricted activities.</li> </ul>
(a)	5 or fewer; or	1.00	0.00	
(b)	6 – 10; or	0.75	0.00	
(c)	11 – 20; or	0.50	0.50	
(d)	more than 20.	0.00	0.00	
3.3	Reserved and/or restricted sectors are not export-oriented or important inputs into other businesses.	1.00	0.00	<ul style="list-style-type: none"> <li>Most reserved activities are oriented towards the domestic consumer market. However, certain activities including wholesaling, export of green and mature coconuts, short-term accommodation services, retail sale of motor vehicles, and fishing activities are export-oriented/used as inputs by other businesses.</li> </ul>
<b>4. Consistency in setting sector/activity limitations</b>				
4.1	Market access limitations are not being set in national policy or legislation outside of the investment law.	0.75	0.75	<ul style="list-style-type: none"> <li>In general, market access limitations are not being set in other legislation or policies.</li> <li>Acquiring land is difficult under the Constitution of Tonga and the Land Act [Cap 46.02]; however, this is not a general limitation to foreign investment.</li> </ul>
4.2	Market access commitments made in bilateral and multilateral investment agreements are not less restrictive than those in the investment law.	0.25	0.25	<ul style="list-style-type: none"> <li>Tonga's commitments to market access in multilateral investment treaties are largely consistent with the FIA.</li> <li>Tonga is a signatory to the General Agreement of Trade in Services (GATS).</li> <li>Tonga has provided provisional notifications on limitations on market access (GATS/SC/143): <ul style="list-style-type: none"> <li>Horizontal <ul style="list-style-type: none"> <li>Taxation measures <ul style="list-style-type: none"> <li>Presence of natural persons – unbound</li> </ul> </li> <li>All sectors in schedule</li> </ul> </li> </ul> </li> </ul>

#	Scoring Criteria	Max	Score	Assessment
				<ul style="list-style-type: none"> <li>• Presence of natural persons – unbound, except for measures affecting the entry and temporary stay of nationals of another member who are: services salespersons; intra-corporate transferees (managers; executives; specialists), personnel engaged in establishment</li> </ul> <ul style="list-style-type: none"> <li>○ Sectoral           <ul style="list-style-type: none"> <li>▪ Legal Services (CPC 861); Accounting, auditing and bookkeeping services (CPC 862); Architectural Services (CPC 8671); Engineering services (CPC 8672); Integrated engineering services (CPC 8673); Urban planning and landscape architectural services (CPC 8674); Medical and dental services (CPC 9312); Veterinary services (CPC 932); Consultancy services related to installation of computer hardware (CPC 841); Software implementation services (CPC 842); Data processing services (CPC 843); Data base services (CPC 844); Other (CPC 845 + 849); Advertising services (CPC 871); Management consulting services (CPC 865); Services related to management consulting (CPC 866); Technical testing and analysis services (CPC 8676); Printing, publishing (CPC 88442); Consultancy related to the provision of Postal Services (CPC 7511); Courier Services (CPC 7512); Basic telecommunications: Voice telephone services (CPC 7521), Packet-switched data transmission services (CPC 7523), Circuit-switched data transmission services (CPC 7523), Telex services (CPC 7523), Telegraph services (CPC 7522), Facsimile services (CPC 7521+ 7529), Private leased circuit services (CPC 7522+7523); Value-added telecommunications services: Electronic mail (CPC 7523), Voice mail (CPC 7523), On-line information and data base retrieval (CPC 7523), Electronic data interchange (EDI) (CPC 7523), Enhanced/value added facsimile services, incl. store and forward, store and retrieve (7523), Code and protocol conversion, On-line information and/or data processing (including transaction processing) (CPC 843), Other; Motion Picture and video tape distribution services (CPC 9611) to other industries for public entertainment, television broadcasting, or sale or rental to others; Motion Picture projection service (CPC 9612); Radio and television distribution services (CPC 9613); Broadcasting services for radio and television programs are specifically excluded; Sound recording (n.a.); General construction work for buildings (CPC 512); General construction work for civil engineering (CPC 513); Installation and assembly work (CPC 514 +516); Building completion and finishing work (CPC 517); Other (CPC 511 + 515 + 518); Commission agent's services (CPC 621); Franchising (CPC 8929)  Primary education services (CPC 921); Secondary education services (CPC 922); Higher education services (CPC 923); Adult education (CPC 924); Other education services (CPC 929); Sewage services / Waste water Services (CPC 9401); Refuse disposal service (CPC 9402); Sanitation and similar services (CPC 9403); Services to reduce exhaust gases and other emissions and improve air quality (CPC 9404); Noise abatement services (CPC 9405); Treatment, remediation of contaminated/polluted soil and water, Nature and landscape protection services (CPC 9406); Other environmental protection services not classified elsewhere (CPC 9409); All insurance and insurance-related services: Life insurance services, Non-life insurance services, Reinsurance and retrocession; Banking and other financial services, (excluding insurance); Hospital services (CPC 9311); Travel Agencies and Tour Operators Services (CPC 7471); Cinema theatre operation services (part of CPC 96199); Maintenance and repair of aircraft (CPC 8868), as defined in paragraph 6(a) of the Annex on Air Transport Services; Computer reservation system (CRS) services, as defined in paragraph 6(c) of the Annex on Air Transport; Supporting services for air transport (CPC 746); Cargo-handling service excluding maritime services (CPC 741); Storage and warehouse service excluding maritime services (CPC 742); Freight transport agency services (CPC 748); Other (CPC 749)</li> </ul> </li> </ul>

#	Scoring Criteria	Max	Score	Assessment
				<ul style="list-style-type: none"> <li>• Presence of natural persons – unbound, except as indicated under horizontal commitments</li> <li>▪ Wholesale trade services (CPC 622) <ul style="list-style-type: none"> <li>• Commercial presence – unbound</li> <li>• Presence of natural persons – unbound, except as indicated under horizontal commitments</li> </ul> </li> <li>▪ Retailing services (CPC 631 &amp; 632) <ul style="list-style-type: none"> <li>• Commercial presence – unbound</li> <li>• Presence of natural persons – unbound, except as indicated under horizontal commitments</li> </ul> </li> <li>▪ Hotels and Restaurants (including catering) (CPC 641-643) <ul style="list-style-type: none"> <li>• Commercial presence – none for investment of TOP 200,000 or more Commercial presence – unbound</li> <li>• Presence of natural persons – unbound, except as indicated under horizontal commitments</li> </ul> </li> <li>▪ Passenger transportation (CPC 7211); Freight transportation (CPC 7212) <ul style="list-style-type: none"> <li>• Commercial presence – unbound</li> <li>• Presence of natural persons – unbound, except as indicated under horizontal commitments</li> </ul> </li> <li>• Under PACER Plus commitments, Tonga has providing the following notifications regarding trade in services and market access: a) unbound for measures regarding devolving a service provided in exercise of governmental authority at the time of the Agreement; b) unbound with respect to the provision of law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, child care, public utilities, public transport, and public housing.</li> </ul>
<b>5. Review of investment law limitations and restrictions</b>				
5.1	The investment law requires review of limitations or restrictions to:	0.75	0.50	
(a)	take place periodically, and include public consultations; and	0.25	0.25	<ul style="list-style-type: none"> <li>• Part 3, Division 1 of the FIA specifies the process through which activities on the reserved list and the restricted list are reviewed. Section 10(3) requires the Registrar of Foreign Investment to consult with relevant stakeholders at national and local levels of government, stakeholders in the private sector, non-government organizations, and the public.</li> <li>• Section 10(1) of the FIA provides that reviews of the reserved activities list and the restricted activities list are the responsibility of the Registrar and must be at intervals of not more than 3 years.</li> </ul>
(b)	Be decided using clearly defined principles; and	0.25	0.25	<ul style="list-style-type: none"> <li>• Section 9 of the FIA provides for a list of non-exhaustive principles to which the Registrar must have regard in their review of the lists. These principles are: <ul style="list-style-type: none"> <li>○ Keeping the lists as short as possible.</li> <li>○ Reduction or addition over time of the number of activities contained in the lists to encourage competition within the economy of Tonga.</li> </ul> </li> </ul>

#	Scoring Criteria	Max	Score	Assessment
				<ul style="list-style-type: none"> <li>○ Clear definition of each activity to enable monitoring and enforcement of conditions.</li> <li>○ No inclusion of an activity unless there are already several Tongan businesses that undertake it.</li> <li>○ No inclusion of an activity producing goods and services that are important inputs into the operations of other Tongan businesses, particularly those that are export-oriented.</li> <li>○ Inclusion of an activity only if it is consistent with Tonga's commitments and obligations under international, regional, multilateral, and bilateral trade and investment agreements.</li> <li>○ No inclusion of an activity without an appropriate provision for existing foreign investors who have been issued with a valid foreign investment certificate in relation to that activity to continue carrying on that activity.</li> </ul>
(c)	provide that an existing foreign investor affected by the introduction of a new limitation or restriction can continue to operate in the activity.	0.25	0.00	<ul style="list-style-type: none"> <li>● Section 8(4) of the FIA guarantees that an existing foreign investor will be able to maintain operations in the event that an activity they engage in becomes restricted. No guarantee is made for activities which become reserved.</li> </ul>
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>6.00</b>	<b>MODERATE</b>

## 2. Investment Guarantees and Obligations

#	Scoring Criteria	Max	Score	Assessment
<b>1. National treatment</b>				
1.1	Investment law includes a commitment to the principle of national treatment with either no exceptions, or clearly acknowledged exceptions relating to the establishment, expansion, management, operation, and protection of their investments.	1.50	0.00	<ul style="list-style-type: none"> <li>• The FIA does not explicitly provide any guarantee of national treatment to investors.</li> <li>• Section 40(2) of the FIA provides that the property in Tonga of an overseas person shall not be subject to expropriation or other adverse dealing: <ul style="list-style-type: none"> <li>○ that is not in accordance with due process of law;</li> <li>○ that is discriminatory;</li> <li>○ for which full and timely compensation is not paid; and</li> <li>○ that is made without independent, fair, and transparent adjudication.</li> </ul> </li> <li>• Tonga is a signatory to GATS. Article XVII requires that “in the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any Member, in respect of all measures affecting the supply of services, treatment no less favorable than it accords to its own services and service providers.”</li> <li>• Tonga has notified the following limitations on national treatment under GATS: <ul style="list-style-type: none"> <li>○ Horizontal: <ul style="list-style-type: none"> <li>▪ Commercial presence—government approval, under the FIA, is required for foreign investors to invest into the Kingdom. The Tongan Constitution prohibits the sale of land to all foreigners. Foreigners can only attain land through leasing, with the right to lease land for up to 99 years, as well as sub-lease property.</li> <li>▪ Presence of natural persons—subsidies available to natural persons may be limited to Tongan citizens.</li> </ul> </li> <li>○ Sector-specific: <ul style="list-style-type: none"> <li>▪ Audio-visual services (cross border supply, consumption abroad, commercial presence)—none, except unbound for support programs established to preserve or promote the cultural identity of Tonga and of countries with which Tonga has bilateral and plurilateral agreements now or in the future.</li> </ul> </li> </ul> </li> <li>• Chapter 7, Article 6 of PACER Plus requires parties to the Agreement in reference to the sectors specified in Annex 7-A to accord to services and service supplies of another party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own services and service suppliers. This is subject to any conditions or qualifications specified in Annex 7-A.</li> <li>• In relation to Chapter 7, Tonga has notified the following limitations on national treatment for commercial presence: <ul style="list-style-type: none"> <li>○ Horizontal: <ul style="list-style-type: none"> <li>▪ All foreign investors require a Foreign Investment Registration Certificate. For greater certainty, the granting and renewal of certificates are not conditional on an economic needs test or the level of foreign ownership.</li> <li>▪ The Tongan Constitution prohibits the sale of land. Foreigners can only attain land through leasing, with the right to lease land for up to 99 years, as well as sub-lease property.</li> </ul> </li> <li>○ Sectoral:</li> </ul> </li> </ul>

#	Scoring Criteria	Max	Score	Assessment
				<ul style="list-style-type: none"> <li>▪ Audio-visual services, motion picture, and video tape distribution services (CPC 9611**) to other industries for public entertainment, television broadcasting, or sale or rental to others—none, except unbound for support programs established to preserve or promote the cultural identity of Tonga and of countries with which Tonga has bilateral and plurilateral agreements now or in the future.</li> <li>▪ Audio-visual services, motion picture projection service (CPC 9612)—none, except unbound for support programs established to preserve or promote the cultural identity of Tonga and of countries with which Tonga has bilateral and plurilateral agreements now or in the future.</li> <li>▪ Audio-visual services, radio, and television distribution services (CPC 9613**) (broadcasting services for radio and television programs are specifically excluded)—none, except unbound for support programs established to preserve or promote the cultural identity of Tonga and of countries with which Tonga has bilateral and plurilateral agreements now or in the future.</li> <li>▪ Audio-visual services, sound recording—none, except unbound for support programs established to preserve or promote the cultural identity of Tonga and of countries with which Tonga has bilateral and plurilateral agreements now or in the future.</li> <li>▪ Distribution services, wholesale trade services (CPC 622)—unbound</li> <li>▪ Retailing service, food retailing services (CPC 631) (food and household provisions for final consumption)—unbound</li> <li>▪ Maritime transport services, international transport (freight and passengers) (CPC 7211 and 7212), excluding cabotage transport—unbound.</li> </ul> <ul style="list-style-type: none"> <li>• Chapter 9, Article 6 of PACER Plus includes a commitment to according investors and covered investments of investors of any other Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the acquisition, establishment, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.</li> <li>• In relation to Chapter 9, Tonga has notified the following limitations on national treatment: <ul style="list-style-type: none"> <li>○ Limits on land acquisition by foreigners.</li> <li>○ Foreign investment certificates are required.</li> <li>○ Foreign investors may own or acquire no more than 25% of the voting shares in an enterprise undertaking reserved activities (note: this appears to be based on the superseded Foreign Investment Act 2002 which defined a foreign investor in relation to a company as where a person who is not a Tongan subject controls more than 25% of the company's voting shares).</li> <li>○ Unbound for measures: a) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force, or b) regarding the sale or disposal of government-owned entities or assets.</li> </ul> </li> </ul>
<b>2. Most-Favored-Nation (MFN) treatment</b>				
2.1	Investment law includes a specific commitment to the principle of non-discrimination in terms of nationality.	1.50	0.00	<ul style="list-style-type: none"> <li>• The FIA does not specifically guarantee MFN treatment.</li> <li>• Tonga is a signatory to GATS. Article II requires Tonga to immediately and unconditionally accord to service and service suppliers of other Members no less favorable treatment than it accords to the services or service suppliers of any other</li> </ul>

#	Scoring Criteria	Max	Score	Assessment
				<p>country.</p> <ul style="list-style-type: none"> <li>• Tonga has notified MFN exemptions for audio-visual services involving the production and distribution of television programs and cinematographic works (GATS/EL/143).</li> <li>• Chapter 7, Article 3 provides that with respect to measures covered by the Chapter, each Party shall accord immediately and unconditionally to services and service suppliers of another Party treatment no less favorable than that it accords to like services and service suppliers of a non-party.</li> <li>• Chapter 9, Article 7 of PACER Plus includes a commitment by parties to accord to investors and their investments of any other Party to the Agreement treatment no less favorable than it accords, in like circumstances, to investors of a non-party or to their investments with respect to the acquisition, establishment, expansion, management, conduct, operation, and sale or other disposition of investments in its territory. <ul style="list-style-type: none"> <li>○ Tonga has listed MFN exemptions in Annex I to facilitate management of existing trade agreements, management of existing and future measures involving aviation, fisheries, and maritime matters, management of regional integration, management of cultural industries, promotion of cultural links between certain countries, promotion and preservation of cultural values, and management of core government functions.</li> </ul> </li> <li>• There do not appear to be policies or legislation in place that discriminate between foreign investors based on their nationality.</li> </ul>
<b>3. Fair and equitable treatment</b>				
3.1	Investment law includes a commitment of fair and equitable treatment that includes reference to the minimum standard of international law, and guarantees investors will not be subject to unreasonable or discriminatory measures and will have equal access to due process of law.	1.50	0.00	<ul style="list-style-type: none"> <li>• The FIA does not explicitly provide any guarantee of national treatment to investors.</li> <li>• Section 40(2) of the FIA provides that the property in Tonga of an overseas person shall not be subject to expropriation or other adverse dealing: <ul style="list-style-type: none"> <li>○ that is not in accordance with due process of law;</li> <li>○ that is discriminatory;</li> <li>○ for which full and timely compensation is not paid; and</li> <li>○ that is made without independent, fair, and transparent adjudication.</li> </ul> </li> <li>• Tonga is a signatory to GATS. Article XVII requires that “in the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any Member, in respect of all measures affecting the supply of services, treatment no less favorable than it accords to its own services and service providers.”</li> <li>• Tonga has notified the following limitations on national treatment under GATS: <ul style="list-style-type: none"> <li>○ Horizontal: <ul style="list-style-type: none"> <li>▪ Commercial presence—government approval, under the FIA, is required for foreign investors to invest into the Kingdom. The Tongan Constitution prohibits the sale of land to all foreigners. Foreigners can only attain land through leasing, with the right to lease land for up to 99 years, as well as sub-lease property.</li> <li>▪ Presence of natural persons—subsidies available to natural persons may be limited to Tongan citizens.</li> </ul> </li> <li>○ Sector-specific: <ul style="list-style-type: none"> <li>▪ Audio-visual services (cross border supply, consumption abroad, commercial presence)—none, except unbound for support programs established to preserve or promote the cultural identity of Tonga and of countries with which Tonga has bilateral and plurilateral agreements now or in the future.</li> </ul> </li> </ul> </li> </ul>



#	Scoring Criteria	Max	Score	Assessment
				<ul style="list-style-type: none"> <li>• Chapter 7, Article 6 of PACER Plus requires parties to the Agreement in reference to the sectors specified in Annex 7-A to accord to services and service supplies of another party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own services and service suppliers. This is subject to any conditions or qualifications specified in Annex 7-A.</li> <li>• In relation to Chapter 7, Tonga has notified the following limitations on national treatment for commercial presence: <ul style="list-style-type: none"> <li>○ Horizontal: <ul style="list-style-type: none"> <li>▪ All foreign investors require a Foreign Investment Registration Certificate. For greater certainty, the granting and renewal of certificates are not conditional on an economic needs test or the level of foreign ownership.</li> <li>▪ The Tongan Constitution prohibits the sale of land. Foreigners can only attain land through leasing, with the right to lease land for up to 99 years, as well as sub-lease property.</li> </ul> </li> <li>○ Sectoral: <ul style="list-style-type: none"> <li>▪ Audio-visual services, motion picture, and video tape distribution services (CPC 9611**) to other industries for public entertainment, television broadcasting, or sale or rental to others—none, except unbound for support programs established to preserve or promote the cultural identity of Tonga and of countries with which Tonga has bilateral and plurilateral agreements now or in the future.</li> <li>▪ Audio-visual services, motion picture projection service (CPC 9612)—none, except unbound for support programs established to preserve or promote the cultural identity of Tonga and of countries with which Tonga has bilateral and plurilateral agreements now or in the future.</li> <li>▪ Audio-visual services, radio, and television distribution services (CPC 9613**) (broadcasting services for radio and television programs are specifically excluded)—none, except unbound for support programs established to preserve or promote the cultural identity of Tonga and of countries with which Tonga has bilateral and plurilateral agreements now or in the future.</li> <li>▪ Audio-visual services, sound recording—none, except unbound for support programs established to preserve or promote the cultural identity of Tonga and of countries with which Tonga has bilateral and plurilateral agreements now or in the future.</li> <li>▪ Distribution services, wholesale trade services (CPC 622)—unbound</li> <li>▪ Retailing service, food retailing services (CPC 631) (food and household provisions for final consumption)—unbound</li> <li>▪ Maritime transport services, international transport (freight and passengers) (CPC 7211 and 7212), excluding cabotage transport—unbound.</li> </ul> </li> </ul> </li> <li>• Chapter 9, Article 6 of PACER Plus includes a commitment to according investors and covered investments of investors of any other Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the acquisition, establishment, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.</li> <li>• In relation to Chapter 9, Tonga has notified the following limitations on national treatment: <ul style="list-style-type: none"> <li>○ Limits on land acquisition by foreigners.</li> </ul> </li> </ul>

#	Scoring Criteria	Max	Score	Assessment
				<ul style="list-style-type: none"> <li>○ Foreign investment certificates are required.</li> <li>○ Foreign investors may own or acquire no more than 25% of the voting shares in an enterprise undertaking reserved activities (note: this appears to be based on the superseded Foreign Investment Act 2002 which defined a foreign investor in relation to a company as where a person who is not a Tongan subject controls more than 25% of the company's voting shares).</li> <li>○ Unbound for measures: a) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force, or b) regarding the sale or disposal of government-owned entities or assets.</li> </ul>
<b>4. Expropriation</b>				
4.1	Investment law includes a commitment ensuring investors will not be subject to direct expropriation or measures with a similar effect, except for a public purpose, in a non-discriminatory way in accordance with laws and procedures, and subject to prompt, adequate, and effective compensation.	1.50	1.50	<ul style="list-style-type: none"> <li>● Section 40(2) of the FIA provides that the property in Tonga of an overseas person shall not be subject to expropriation or other adverse dealing: <ul style="list-style-type: none"> <li>○ that is not in accordance with due process of law;</li> <li>○ that is discriminatory;</li> <li>○ for which full and timely compensation is not paid; and</li> <li>○ that is made without independent, fair, and transparent adjudication.</li> </ul> </li> <li>● Article 6, Chapter 9 of PACER Plus requires Tonga to, in the sectors specified in Annex 9-A of the Agreement, and subject to any conditions and qualifications set out therein, each Party shall accord to investors and covered investments of investors of any other Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the acquisition, establishment, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.</li> </ul>
<b>5. Convertibility and repatriation of funds</b>				
5.1	Investment law guarantees free and prompt transfer of funds related to foreign investment in a freely convertible currency.	1.00	1.00	<ul style="list-style-type: none"> <li>● Section 40(4) of the FIA provides that, subject to laws relating to taxation or exchange control, an overseas person who holds a valid foreign investment registration certificate may transfer any capital and income of its foreign investment business to any place outside Tonga.</li> </ul>
5.2	Host country does not impose any restrictions on the free and prompt transfer of funds, or if it does, these exceptions are identified.	0.50	0.50	<ul style="list-style-type: none"> <li>● Foreign Exchange is the responsibility of the Reserve Bank of Tonga under the Foreign Exchange Control Act 2018 (FECA), the Exchange Control Directive 2018.</li> <li>● For Tongan non-residents, all funds brought from abroad will be allowed to be remitted out provided that a) the foreign investment business has a valid foreign investment certificate, and b) subject to the submission of bank confirmation of receipt of funds in Tonga.</li> <li>● Section 6(s) of the FECA provides the capacity for the Reserve Bank of Tonga to restrict the ability of residents to remit funds and securities overseas. Section 8 of the FECA also provides the Reserve Bank with powers to require the repatriation of gold or foreign exchange for Tongan residents. Section 9 clarifies that the repatriation power would not be applicable under prescribed thresholds.</li> <li>● The Exchange Control Directive has a broad definition of "resident" which would cover many foreign investors. The directive provides that a person is considered a resident if a) they have lived in Tonga for more than 1 year; b) are a body corporate registered or incorporated in Tonga; c) a person licensed to carry on a business in Tonga; d) an office, branch, or agency in Tonga owned or controlled by a person outside of Tonga; or e) an office, branch, or agency outside Tonga owned or controlled by a person in Tonga.</li> <li>● Authorized persons may approve the repatriation by companies of operating and capital profits, including the withdrawal of investments, up to the delegated limit per applicant per annum. Applications that fall outside the delegated limits are to be made on Form A and submitted to the Reserve Bank with required documents.</li> <li>● Under the Exchange Control Directive, the following limits and evidence is required for the following common business transactions:</li> </ul>

#	Scoring Criteria	Max	Score	Assessment
				<ul style="list-style-type: none"> <li>○ Profit declared and distributed to non-resident shareholders/partners/sole proprietors: <ul style="list-style-type: none"> <li>▪ Documentary requirements: a) audited accounts for amounts above T\$100,000 per amount distributed; b) unaudited accounts for amounts of T\$100,000 and below; c) directors' resolution approving profit distribution.</li> <li>▪ Delegated limit: Up to T\$100,000 per application or up to T\$5,000 per transaction without supporting documents.</li> </ul> </li> <li>○ Reduction of funds by foreign companies: <ul style="list-style-type: none"> <li>▪ Documentary requirements: a) letter from head office to advise source of funds and decision to reduce funds, b) evidence of source of funds (e.g., bank statements).</li> <li>▪ Delegated limit: Up to T\$100,000 per application or up to T\$5,000 per transaction without supporting documents.</li> </ul> </li> <li>• Withdrawal of investment by non-resident investors (sales of shares/assets and shareholders' funds): <ul style="list-style-type: none"> <li>▪ Documentary requirements: a) signed sale and purchase agreement (or original documentary proof of sale) of shares/assets, b) audited financial accounts for shareholders' funds for amounts above T\$100,000, c) original bank confirmation that funds originated from offshore (where applicable), d) evidence that the beneficiary is non-resident, and e) letter from the Ministry of Public Enterprise endorsing the application if the applicant is a public enterprise.</li> <li>▪ Delegated limit: Up to T\$100,000 per application or up to T\$5,000 per transaction without supporting documents.</li> </ul> </li> </ul>
<b>6. Dispute settlement</b>				
6.1	The country has ratified (and, where applicable to the country's legal system, domestically enacted) international conventions for settlement of investment disputes:	1.50	1.50	
(a)	Convention on the Settlement of Investment Disputes between states and nationals of other states (ICSID); and	0.75	0.75	<ul style="list-style-type: none"> <li>• Section 40(1) of the FIA provides that, subject to the FIA and any other laws, the Convention on the Settlement of Investment Disputes has the force of law in Tonga.</li> </ul>
(b)	New York Convention on Recognition and Enforcement of Arbitral Awards.	0.75	0.75	<ul style="list-style-type: none"> <li>• Tonga acceded to the New York Convention on 12 June 2020 on the basis that it would only apply the Convention to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law. The Convention entered into force on 10 September 2020.</li> <li>• Tonga has domestically enacted the Convention through the International Arbitration Act 2020, which came into force on 3 March 2021.</li> </ul>
<b>7. Investor behavior</b>				
7.1	Investment law includes a requirement that foreign investors:	1.00	1.00	
(a)	comply with all domestic laws and regulations; and	0.50	0.50	<ul style="list-style-type: none"> <li>• Section 4 of the FIA provides that an overseas person may carry on any business activity subject to the compliance with the laws of Tonga and the exceptions and restrictions set out in Section 5.</li> </ul>

#	Scoring Criteria	Max	Score	Assessment
(b)	provide periodic statistical reports concerning their operations.	0.50	0.50	
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>5.50</b>	<b>MODERATE</b>

### 3. Foreign Investor Residence in Country

#	Scoring Criteria	Max	Score	Assessment
<b>1. Screening approach</b>				
1.1	Country has a temporary residence permit for investors / businesspersons available to:	2.00	1.00	<ul style="list-style-type: none"> <li>Tonga does not have a legislated work permit system. Accordingly, Tonga does not officially require foreign investors or intra-company transfers to obtain a work permit prior to applying for a relevant visa.</li> <li>Under its GATS specific commitments, Tonga indicates that for the presence of intra-company transferees (i.e., managers, executives, specialists, and personnel engaged in establishment) is limited to a 2 year period which may be renewed.</li> </ul>
(a)	owners of a registered foreign investment (immigrant investors) without the need to apply for a separate work permit; and	1.00	1.00	<ul style="list-style-type: none"> <li>Owners of registered foreign investments are eligible for a business visa while foreign employees are eligible for an employment visa. While a letter of support is required from MTED for this visa category, it is not in reference to labor concerns.</li> </ul>
(b)	designated representatives / intra-company transfers of a registered overseas-based investment without the need to apply for a separate work permit.	1.00	0.00	<ul style="list-style-type: none"> <li>Designated representatives or intra-company transfers will not be issued an employment visa unless a letter of support is provided by the MTED Labour Division. This support appears to be contingent on an assessment that the proposed employment involves a specialized skill. Accordingly, the Tongan immigration system is assessed as implementing a de facto work permit scheme.</li> </ul>
1.2	If 1.1(a) and/or (b) is met, then the temporary residence permit is:	3.50	1.00	
(a)	administered solely by the immigration authority and issued without approvals or support from other authorities (excluding FDI entry requirements); and	0.50	0.50	<ul style="list-style-type: none"> <li>Administration of business visas is solely the responsibility of the Ministry of Foreign Affairs, Immigration Division.</li> <li>Section 9 of the Immigration Act [Cap. 62] provides the Principal Immigration Officer with wide discretion to issue permits. This can be on conditions including the security to be furnished, the profession or occupation which the holder may exercise or engage in and the person by whom the holder may be employed within Tonga, and other similar matters deemed by the Principal Immigration Officer or prescribed in regulation.</li> </ul>
(b)	issued according to the following decision criteria:	2.00	0.50	
	(i) only checks ensuring that the foreign investment has successfully met FDI entry requirements, the person has a valid passport and passes objective character and health tests and has a minimum amount of funds for residence; or	<u>2.00</u>	<u>0.00</u>	
	(ii) meets the requirements of (i), plus the enterprise must satisfy a minimum investment threshold; or	<u>1.50</u>	<u>0.00</u>	<ul style="list-style-type: none"> <li>There is no current minimum investment level required for issuing a business visa.</li> </ul>
	(iii) meets the requirements of (i), plus	<u>0.50</u>	<u>0.50</u>	<ul style="list-style-type: none"> <li>A business visa requires the following application requirements:</li> </ul>

#	Scoring Criteria	Max	Score	Assessment
(c)	meet a range of additional, investor-specific requirements; and  processed in accordance with a statutory processing period of 20 working days or less.	1.00	0.00	<ul style="list-style-type: none"> <li>○ Application form: <ul style="list-style-type: none"> <li>▪ Permit details: number of people on application; visa class; visa category.</li> <li>▪ Personal details: Full name; date of birth; place and country of birth; gender; marital status; passport information; occupation (attaching qualifications); date of first entry to Tonga; length of time in Tonga.</li> <li>▪ Contact details: postal address for correspondence; intended address in Tonga; phone contact; fax contact; email.</li> <li>▪ Dependents information.</li> <li>▪ Consent for child application.</li> <li>▪ Declaration.</li> </ul> </li> <li>○ Two recent passport photos.</li> <li>○ Application fee of T\$345 (~USD 150) and any other required fees.</li> <li>○ Valid passport (valid for the period for which the visa is to be issued).</li> <li>○ A medical report (in accordance to prescribed Health Form) issued within the past 6 months by a medical practitioner approved by Tonga Immigration or by any of the doctors specified.</li> <li>○ A National Police Clearance issued in the past 3 months (for persons over age of 16) from country of ordinary residence.</li> <li>○ Two character references from two individuals who have known the applicant for a significant period of time (the referees' full contact details must be provided for verification by the visa officer).</li> <li>○ Copy of Foreign Investment Registration Certificate.</li> <li>○ Business licence.</li> <li>○ Business profile/extract (which confirms ownership/shareholders).</li> <li>○ Any other documents required by Immigration Tonga.</li> <li>○ Letter of support from MTED.</li> <li>○ For renewed applications, a letter of support from the Inland Revenue Department on history of tax payment(s).</li> </ul> <ul style="list-style-type: none"> <li>● No statutory processing times are in place; however, the application checklist states that applications can take up to 1 month to process.</li> </ul>
<b>2. Duration of investor residence permit</b>				
2.1	Investor-class temporary residence permits are issued using a two-stage process: (a) initially for a period sufficient to enable the investor to demonstrate they have successfully established themselves, such as 1 year, and then (b) once establishment has been verified, for longer periods.	1.00	0.00	<ul style="list-style-type: none"> <li>● Business visas are not issued in a two-stage approach and are not tied to the implementation of an investment.</li> </ul>
2.2	Foreign investors associated with established foreign investments may eventually apply for residence permits with duration of at least 5 years.	2.00	2.00	<ul style="list-style-type: none"> <li>● Business visas do not have a statutory limit and can be issued for multiple years; however, there is no official information publicly available concerning visa length. Tonga currently adopts an informal practice of issuing business visas for an initial 2-year period, with 5-year visas available thereafter. Prior practice was up to the discretion of immigration authorities, which generally issued visas ranging from 2-5 years in length.</li> </ul>
<b>3. Resident permit fee</b>				

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#	Scoring Criteria	Max	Score	Assessment
3.1	Total temporary residence permit cost for a foreign investor over a 5-year period:	1.50	1.50	<ul style="list-style-type: none"> <li>• The Schedule to the Immigration Regulations provides for the following fees:                             <ul style="list-style-type: none"> <li>○ Business visa: T\$300 (~USD 133) per person, per year.</li> <li>○ Employment visa: T\$200 (~USD 88) per person, per year.</li> </ul> </li> <li>• A 5-year business visa would cost ~USD 665 and a 5-year employment visa would cost ~USD 440.</li> <li>• An application to transfer while in Tonga from a visitor's permit to a business visa is T\$7,500 (~USD 3,328) and to an employment visa is T\$5,000 (~USD 2,218).</li> </ul>
(a)	less than USD 1,000; or	1.50	1.50	
(b)	USD 1,001 – USD 2,000.	0.75	0.00	
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>5.50</b>	<b>MODERATE</b>

## 4. Foreign Direct Investment Monitoring and Reporting

#	Scoring Criterion	Max	Score	Assessment
<b>1. Tracking FDI across government</b>				
1.1	Government regulators have the ability to efficiently communicate with one another about foreign investors through the use of unique business identifiers.	1.50	0.00	<ul style="list-style-type: none"> <li>Tonga does not have a system for issuing unique business identifiers for use across government.</li> </ul>
<b>2. Monitoring and enforcement</b>				
2.1	Transparent criteria define when an FDI is considered established.	0.75	0.00	<ul style="list-style-type: none"> <li>Tonga does not have criteria for determining when FDI is considered established.</li> <li>Section 20(2)(a) of the FIA provides that a certificate will expire and cease to be valid if no business activity to which it relates is not commenced within 1 year of the issuance of the certificate.</li> </ul>
2.2	Regulators have legislated inspection powers to determine if the conditions of FDI registration/visas are being breached.	0.75	0.75	<ul style="list-style-type: none"> <li>Section 36 of the FIA provides the Registrar with powers of inspection to, by written notice, require a person to file such information as the Registrar considers reasonably necessary to ascertain whether or not a person is carrying on a business activity in breach of the Act or regulations. Section 37 provides for the process around the use of this power.</li> <li>Section 21 of the Immigration Act provides the Principal Immigration Officer with the power to examine persons and determine whether they are a prohibited immigrant. Prohibited immigrants may be detained and deported.</li> </ul>
2.3	Offences and penalties are specified in legislation and:	0.50	0.50	<ul style="list-style-type: none"> <li>Section 39 of the FIA provides for a number of offences addressing all legislative requirements:                             <ul style="list-style-type: none"> <li>Carrying on a business activity in breach of the Act or regulations: a fine on conviction not exceeding TOP 10,000 (~USD 4400).</li> <li>Filing an application, report, notice, or document required under the Act or regulations knowing it is false or misleading in a material particular: a fine on conviction not exceeding TOP 2,500 (~USD 1100).</li> <li>Failure to comply with a requirement of the Act or regulations to file an application, report, notice, or other document: a fine on conviction not exceeding TOP 2,500 (~USD 1100).</li> </ul> </li> <li>Failing to comply with a notice by the Registrar under Section 36 without a reasonable excuse: a fine on conviction not exceeding TOP 2,500 (~USD 1100).</li> </ul>
(a)	address all legislated requirements; or	0.50	0.50	
(b)	address some but not all legislated requirements.	0.25	0.00	
2.4	Regulators proactively monitor:	2.00	1.00	<ul style="list-style-type: none"> <li>Regular monitoring to ensure establishment requirements are met is not effectively carried out.</li> <li>Unscheduled inspections are undertaken on an ad hoc basis if information is provided to the relevant authority.</li> <li>Tongan authorities regularly conduct FDI registration and visa checks. Tonga has a cross-government taskforce that monitors businesses on a weekly basis.</li> </ul>
(a)	FDI to ensure establishment requirements are met; and	1.00	0.00	
(b)	FDI compliance with registration and residence visa requirements.	1.00	1.00	



#	Scoring Criterion	Max	Score	Assessment
<b>3. Appeals</b>				
3.1	Foreign investors have the right to appeal FDI registration decisions, including:	1.00	1.00	
(a)	denial of an application; and	0.50	0.50	<ul style="list-style-type: none"> <li>• Section 19(1) provides that where an applicant is refused a certificate, they may appeal to the minister within 10 working days of the date of the decision.</li> <li>• Upon receipt of the appeal: <ul style="list-style-type: none"> <li>○ The minister must appoint an arbitrator within 5 working days to determine the appeal as per Section 19(2).</li> <li>○ The arbitrator must give a written decision within 20 working days. This decision is final as per Section 19(3).</li> <li>○ The minister must inform the applicant of the arbitrator's decision within 5 working days of receiving the decision as per Section 19(4).</li> </ul> </li> <li>• There is no scheduled appeal fee.</li> </ul>
(b)	revocation of registration.	0.50	0.50	<ul style="list-style-type: none"> <li>• Section 27(2) provides that if the holder makes a written submission within 10 working days of the date of the notice, the Registrar shall not cancel the certificate without fully considering the holder's submission.</li> <li>• Section 27(3) provides that the Registrar shall give the holder a written notice of their decision within 5 working days of the expiry of the 10-working day period for the holder to make a submission.</li> <li>• Section 27(4) provides that if the decision is to cancel the certificate, the notice of the decision shall: <ul style="list-style-type: none"> <li>○ state the reasons for the decision;</li> <li>○ explain the right of the holder to appeal to the Supreme Court against the decision; and</li> <li>○ explain the effect of Section 29 relating to when cancellation becomes effective.</li> </ul> </li> <li>• Section 28 enables a certificate holder to appeal to the Supreme Court against the decision of the Registrar to cancel a certificate under Section 26 within 20 working days of the date of the notice under Section 27(3).</li> <li>• Section 29 provides that the cancellation becomes effective: <ul style="list-style-type: none"> <li>○ If the holder has not filed an appeal within 20 working days of the date of notice of cancellation given under Section 27(3): at the expiry of that period.</li> <li>○ If the holder has filed an appeal in accordance with Section 27(3) and the appeal fails or is abandoned: at the expiry of 10 working days of the date on which the appeal is finally determined or struck out.</li> </ul> </li> <li>• There is no scheduled appeal fee.</li> </ul>
3.2	Foreign investors have the right to appeal residence permit decisions, including:	1.00	1.00	
(a)	denial of application; and	0.50	0.50	<ul style="list-style-type: none"> <li>• Section 9(4) of the Immigration Act provides that any person aggrieved by the refusal of the Principal Immigration Officer to issue an entry permit under Section 9(1) may, within 30 days of notification of such refusal, appeal in writing to the Prime Minister, whose decision shall be final.</li> <li>• Appeal fee: T\$500 per person</li> <li>• There is no statutory processing time.</li> </ul>
(b)	revocation of residence permit.	0.50	0.50	<ul style="list-style-type: none"> <li>• Section 11(4) of the Immigration Act provides that in the case of notification of cancellation, the Principal Immigration Officer must inform the person that they may,</li> </ul>

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#	Scoring Criterion	Max	Score	Assessment
				<p>within such time and in such manner as may be prescribed, appeal to the Prime Minister, whose decision shall be final.</p> <ul style="list-style-type: none"> <li>Section 30(2) of the Immigration Act provides that any person aggrieved by a decision of the Principal Immigration officer may appeal such decisions to cabinet. The appeal must be in petition in writing and made within 14 days of the relevant decision.</li> <li>Appeal fee: T\$500 per person.</li> <li>There is no statutory processing time.</li> </ul>
<b>4. Reporting</b>				
4.1	Non-commercially sensitive information about a registered foreign investment's ownership and investment activities is:	1.50	0.50	<ul style="list-style-type: none"> <li>Section 31 of the FIA provides for the information that is maintained on the register. None of the minimum required information is commercially sensitive.</li> </ul>
(a)	available online; or	1.50	0.00	<ul style="list-style-type: none"> <li>Information is not available online.</li> </ul>
(b)	only available through requests to the regulator.	0.50	0.50	<ul style="list-style-type: none"> <li>Information on registered investments is currently available through request to the Registrar; however, MTED is planning to transition to an online registry system.</li> </ul>
4.2	Periodic FDI reports address the following:	1.50	0.25	
(a)	make up of FDI in the country; and	0.25	0.25	<ul style="list-style-type: none"> <li>Section 35 places an obligation on the Registrar to prepare an annual report as to the administration of the FIA during the financial year, and the conduct of investment activities by foreign investors in Tonga during the financial year. The report is mandated to cover the administration of the FIA during the financial year and the conduct of investment activities by foreign investors in Tonga during the financial year.</li> </ul>
(b)	extent to which investment actually occurs; and	0.25	0.00	<ul style="list-style-type: none"> <li>A report under the new FIA has not been produced.</li> </ul>
(c)	actual impacts associated with FDI.	1.00	0.00	<ul style="list-style-type: none"> <li>A report under the new FIA has not been produced.</li> </ul>
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>5.00</b>	<b>MODERATE</b>

## 5. Investment Promotion

#	Scoring Criterion	Max	Score	Assessment
<b>1. Strategic approach to investment</b>				
1.1	IPI is guided by clear and realistic goals against which the IPI's performance is managed.	2.00	0.00	<ul style="list-style-type: none"> <li>The Government of Tonga has not endorsed a set of quantifiable FDI goals.</li> </ul>
1.2	IPI has its services driven by a written, multi-year investment promotion strategy.	2.00	0.00	<ul style="list-style-type: none"> <li>Tonga does not currently have a written, multi-year investment promotion strategy. However, the MTED Corporate Plan identifies market research into key export destinations as a priority. There are references to a 2009 Investment Promotion Strategy which is out of date and not considered official government policy.</li> <li>The "Tonga Investment Facilitation and Promotion Strategy" was prepared in consultation with Tonga by the Commonwealth Secretariat. The strategy makes recommendations for system changes and target sectors; however, it was endorsed in April 2002, outside of the reporting period.</li> <li>The Government of Tonga Budget Statement for Year Ending 30 June 2021 indicates that the government intends to develop an updated NIPS.</li> </ul>
<b>2. Organizational form</b>				
2.1	IPI is an:	1.50	0.50	<ul style="list-style-type: none"> <li>MTED is responsible for the delivery of investment promotion services in Tonga. The Trade and Investment Division (TID) has three staff and is responsible for trade information and market research, trade negotiation, export marketing, and FDI promotion and facilitation.</li> <li>The FDI Promotion and Facilitation Unit is a sub-unit of MTED, and is responsible for IPI services.</li> <li>MTED is responsible for a broad range of areas including business registration, intellectual property, business support services, labor regulation, consumer protection and fair trade, and trade and investment.</li> </ul>
(a)	autonomous agency; or	1.50	0.00	
(b)	integral unit of a major ministry; or	1.00	0.00	
(c)	sub-unit of a major ministry.	0.50	0.50	
2.2	IPI has access to private sector experience in an oversight or advisory role:	0.50	0.00	<ul style="list-style-type: none"> <li>The FDI Promotion and Facilitation Unit is not guided by any private sector experience. Responsibility is to the chief executive officer (CEO) of MTED.</li> </ul>
(a)	board has at least 40% private sector representation; or	0.50	0.00	
(b)	board has some private sector representation.	0.25	0.00	
<b>3. IPI functions</b>				
3.1	IPI's role is:	1.00	1.00	<ul style="list-style-type: none"> <li>The FDI Promotion and Facilitation Unit only has responsibility for investment promotion services. TID has broader responsibilities, but these are not of a regulatory nature.</li> <li>MTED is responsible for FDI regulation; however, this is undertaken by the Business Registry and Intellectual Property Division.</li> </ul>
(a)	limited solely to providing investment promotion services; or	1.00	1.00	

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#	Scoring Criterion	Max	Score	Assessment
(b)	broader than investment promotion but does not involve regulatory responsibilities such as FDI monitoring and enforcement.	0.50	0.00	
<b>4. IPI activities</b>				
4.1	IPI maintains an investment promotion website with the following up to date information:	1.10	0.10	<ul style="list-style-type: none"> <li>Tonga does not currently have a dedicated investment promotion website. Limited information is available at the Tonga Trade Portal site (<a href="https://tonga.tradeportal.org/?l=en">https://tonga.tradeportal.org/?l=en</a>). There are plans for a dedicated investment promotion website to be launched in late 2022.</li> </ul>
(a)	National Investment Policy Statement; and	0.30	0.00	<ul style="list-style-type: none"> <li>A NIPS is not available on a MTED-hosted website. An outdated NIPS from 2009 is available online.</li> </ul>
(b)	key business start-up and operational requirements; and	0.10	0.00	<ul style="list-style-type: none"> <li>Key business start-up and operational requirements are available on the Tonga Trade Portal; however, this is not hosted by MTED.</li> </ul>
(c)	strengths of the country as an investment destination; and	0.10	0.00	<ul style="list-style-type: none"> <li>Information on the strengths of the country as an investment destination is not available on the MTED website.</li> </ul>
(d)	business cost data; and	0.20	0.00	<ul style="list-style-type: none"> <li>Business cost data is not available on the MTED website.</li> </ul>
(e)	business conditions within priority sectors and potential areas for investment; and	0.20	0.00	<ul style="list-style-type: none"> <li>Business conditions within priority sectors are not available on the MTED website.</li> </ul>
(f)	investor testimonials; and	0.10	0.00	<ul style="list-style-type: none"> <li>Investor testimonials are not available.</li> </ul>
(g)	contact details.	0.10	0.10	<ul style="list-style-type: none"> <li>Contact details are available on the MTED website; however, these are generic contact details for the ministry, rather than the FDI Promotion and Facilitation Unit.</li> </ul>
4.2	IPI provides facilitation services:	0.70	0.20	<ul style="list-style-type: none"> <li>The FDI Promotion and Facilitation Unit currently assigns one dedicated desk officer to all investment facilitation and promotion activities, and to provide assistance to investors.</li> </ul>
(a)	protocols in place enabling prompt response to investor inquiries; and	0.30	0.00	<ul style="list-style-type: none"> <li>Formal protocols to respond to investor enquiries are not in place. The average response time is 1-3 days.</li> </ul>
(b)	account managers facilitate investments in priority sectors; and	0.20	0.20	<ul style="list-style-type: none"> <li>The FDI Promotion and Facilitation Unit has one account officer for all investment.</li> </ul>
(c)	proactive support provided to investments in priority sectors.	0.20	0.00	<ul style="list-style-type: none"> <li>Assistance is generally provided on a reactive rather than proactive basis.</li> </ul>
4.3	IPI regularly undertakes advocacy across government to improve the investment climate.	0.30	0.00	<ul style="list-style-type: none"> <li>The FDI Promotion and Facilitation Unit does not regularly undertake advocacy across government to improve the investment climate.</li> <li>As a sub-unit of a major ministry, responsibility for investment climate reforms are generally conducted at the divisional or whole-of-ministry level.</li> </ul>
<b>5. Streamlined online approvals</b>				
5.1	Investors have the ability to complete investment approvals through electronic systems for:	1.00	0.60	

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#	Scoring Criterion	Max	Score	Assessment
(a)	foreign investment certification; and	0.20	0.00	<ul style="list-style-type: none"> <li>Foreign investment certification is a responsibility of MTED and cannot be completed online.</li> </ul>
(b)	company registration; and	0.20	0.20	<ul style="list-style-type: none"> <li>Company registration can be completed online at the Business Registries Office website.</li> </ul>
(c)	business names registration (if applicable); and	0.20	0.20	<ul style="list-style-type: none"> <li>Business names registration can be completed online at the Business Registries Office website.</li> </ul>
(d)	tax registration; and	0.20	0.00	<ul style="list-style-type: none"> <li>Tax registration is a responsibility of the Ministry of Revenue and Customs and cannot be completed online.</li> </ul>
(e)	business licences.	0.20	0.20	<ul style="list-style-type: none"> <li>Business licences can be completed online at the Business Registries Office website.</li> </ul>
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>2.40</b>	<b>WEAK</b>

## 6. Reserved and Restricted Activities

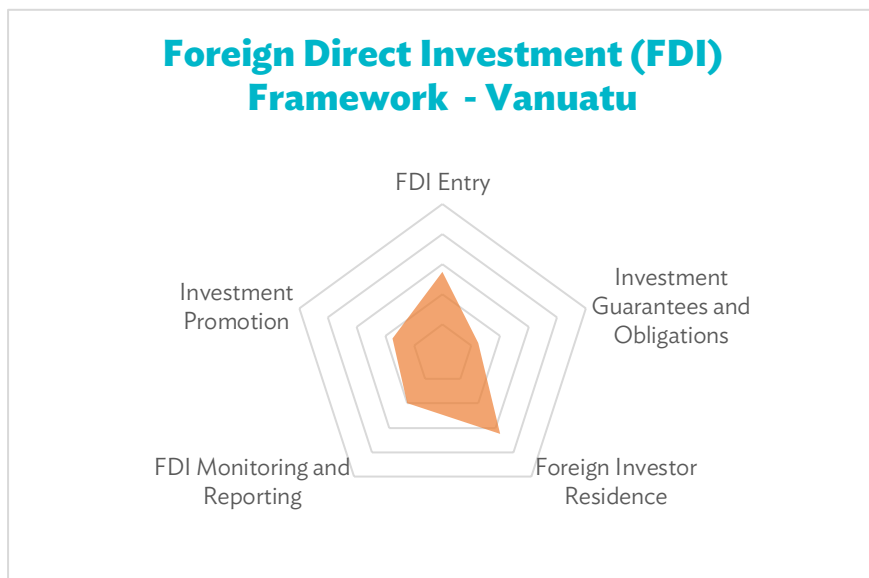
### Foreign Investment Regulations 2021, Schedule 1 RESERVED LIST

No.	Activity
1	Urban and suburban passenger land transport in the form of bus services, excluding those operated by short-term accommodation services (ISIC 4921).
2	Other passenger transport in the form of taxi services, excluding those operated by short-term accommodation services (ISIC 4922).
3	Short-term accommodation services in the form of guest houses and youth hostels (ISIC 5510).
4	Sale of motor vehicles in the form of retail sale of used vehicles (ISIC 4510).
5	Retail sale of food in a specialized store in the form of bakery products (ISIC 4721).
6	Creative, arts, and entertainment activities in the form of traditional Tongan cultural activities (ISIC 9000).
7	Wholesale of oleaginous fruit in the form of export of green and mature coconuts (ISIC 4620).
8	Fishing activities comprising any of the following: <ul style="list-style-type: none"> <li>(a) reef fishing;</li> <li>(b) inshore fishing within 12 nm (Zone C) in water depth less than 1000 metres;</li> <li>(c) bottom fishing in water depth less than 500 metres; or</li> <li>(d) processing and preservation of fish.</li> </ul>

### Foreign Investment Regulations 2021, Schedule 2 RESTRICTED LIST

No.	Activity	Conditions
1	Commercial fishing comprising any of the following: <ul style="list-style-type: none"> <li>(a) tuna fishing;</li> <li>(b) bottom fishing in water deeper than 500 metres; or</li> <li>(c) other deep-water fishing in water not less than 100 metres.</li> </ul>	<ul style="list-style-type: none"> <li>• At least 30% equity held by Tongan citizen(s).</li> <li>• The foreign investor must have at least \$500,000 in owner's contribution or paid-up capital for companies in the form of cash from the operational date, to be fully brought into Tonga within the implementation period.</li> <li>• Subject to respective resource management plan (administered by the Ministry of Fisheries).</li> </ul>
2	Retail sale in non-specialized stores with food, beverages, or tobacco predominating (ISIC 4711).	<ul style="list-style-type: none"> <li>• Foreign investor must have at least \$1 million in owner's contribution or paid-up capital for companies in form of cash from the operational date, to be fully brought into Tonga within the implementation period.</li> </ul>
3	Production of farming of any of the following: <ul style="list-style-type: none"> <li>(a) squash;</li> <li>(b) paper mulberry;</li> <li>(c) pandanus; or</li> <li>(d) kava.</li> </ul>	<ul style="list-style-type: none"> <li>• At least 30% equity held by Tongan citizen(s).</li> <li>• Foreign investor must have at least \$500,000 in owner's contribution or paid-up capital for companies in the form of cash from the operational date, to be fully brought into Tonga within the implementation period.</li> </ul>

## Country Assessment Matrix: Vanuatu



Factor	Alignment
FDI Entry	MODERATE
Investment Guarantees and Obligations	WEAK
Foreign Investor Residence	MODERATE
FDI Monitoring and Reporting	WEAK
Investment Promotion	WEAK

## 1. Foreign Direct Investment Entry

#	Scoring Criteria	Max	Score	Assessment
<b>1. FDI Screening</b>				
1.1	General screening	5.00	0.00	
(a)	FDI is not separately screened and foreign investors are required to comply with business registration requirements like a citizen-owned business; or	3.50	0.00	<ul style="list-style-type: none"> <li>Section 38 of the Foreign Investment Act 2019 (FIA) requires foreign investors to obtain a foreign investment registration certificate.</li> <li>Once a certificate is obtained, the investor must proceed to other business start-up requirements, similar to domestic investors.</li> </ul>
(b)	additional FDI registration is required:	1.75	1.00	
(i)	relevant processes and assessment criteria are up to date, outlined in detail, and made readily accessible to investors; and	0.25	0.25	<ul style="list-style-type: none"> <li>The VFIPA website provides detailed information about the FDI certification process (<a href="https://www.investvanuatu.vu/business-in-vanuatu/investment-approval/">https://www.investvanuatu.vu/business-in-vanuatu/investment-approval/</a>).</li> </ul>
(ii)	registration applies to investments with any level of direct foreign ownership; and	0.25	0.25	<ul style="list-style-type: none"> <li>Section 1 of the FIA requires an investment in any activity for the principal purpose of financial gain, with any level of non-citizen ownership or control to comply with the registration requirement.</li> <li>Exceptions to the requirement include things such as: maintaining a bank account in Vanuatu; acquiring land or any other interest in real property; an isolated transaction, not being one of a number of similar transactions repeated from time to time or from which there will be derived a reoccurring or continuing benefit; taking security for or collecting any debt or enforcing any rights relating to any security; gathering information or undertaking a feasibility study in contemplation of an investment proposal; or entry into and performance of a contract for the supply of goods or services by a supplier engaged by the Vanuatu government for government negotiated projects.</li> </ul>
(iii)	registration criteria are objective and limited to ensuring that proposed investments are consistent with pre-determined reserved/restricted lists and the investor(s) is not breaching disqualification criteria; and	0.25	0.00	<ul style="list-style-type: none"> <li>Section 38(1) of the FIA provides that an applicant must apply to the CEO of VFIPA to register an investment activity or activities.</li> <li>Section 40(1) of the FIA provides that the CEO must make a preliminary determination on whether the application contains all the information under Section 39 or the information contained in the application is sufficient for determining the nature of each activity.</li> <li>Section 41(1) requires the CEO to consider an application for the purposes of determining the nature of each investment activity specified in the application, including, in particular, whether carrying out the investment activity would involve carrying out a prohibited activity, a reserved activity, or a restricted activity.</li> <li>Section 43(1) requires the CEO to register an investment activity if: <ul style="list-style-type: none"> <li>it does not involve carrying out a prohibited activity or reserved activity; and</li> <li>it involves carrying out a restricted activity, subject to the foreign investor complying with specified conditions in respect of the restricted activity specified on the certificate; and</li> <li>the CEO is satisfied that the foreign investor has complied with the conditions prescribed in the regulations.</li> </ul> </li> <li>However, the form and the business start-up guide currently suggest a more involved and discretionary decision-making process than simple registration. In addition to the proposed activities' compliance with the reserved and restricted lists, staff assess whether proposed investors are "fit and proper persons" based on submitted police clearances as part of the application. An assessment is also being made of investor's</li> </ul>



#	Scoring Criteria	Max	Score	Assessment
	(iv) application process requires information limited to investor biographical information; business name; contact details; description of investment and business information; and a brief business plan; and	0.25	0.00	<p>ability to fund their proposed investment (based on bank statements that must be submitted), if the proposed investments are in the national interest, and if the proposed investments will create capital inflows and Ni-Vanuatu employment.</p> <ul style="list-style-type: none"> <li>• Section 39(2) of the FIA provides for the minimum required information for the application form. Section 39(1) requires the application to be made in prescribed form. There does not appear to be a prescribed form; however, VFIPA are using a non-prescribed form.</li> <li>• The application for new foreign investment certificate approval requires substantial amounts of information: <ul style="list-style-type: none"> <li>○ General information and checklist: <ul style="list-style-type: none"> <li>▪ Proposed business name.</li> <li>▪ Name of key contact.</li> <li>▪ Mailing address.</li> <li>▪ Telephone.</li> <li>▪ Email.</li> <li>▪ Brief description of proposed investment.</li> </ul> </li> <li>○ Foreign investor information: <ul style="list-style-type: none"> <li>▪ Investor details: surname; first name; business percentage; telephone; facsimile number; email address; primary nationality; secondary nationality.</li> <li>▪ Details of other companies as shareholders.</li> <li>▪ Associated businesses in Vanuatu or overseas: name of business; names of shareholders.</li> <li>▪ Form of intended business entity: sole proprietorship; partnership; local private company limited by shares; local private company limited by guarantee; other.</li> </ul> </li> <li>○ Business activities and location: <ul style="list-style-type: none"> <li>▪ Intended investment categories, business activities and location: code; investment category; business activity; primary activity(ies) in order of priority; location.</li> <li>▪ Reserved business activities.</li> </ul> </li> <li>○ Implementation issues: <ul style="list-style-type: none"> <li>▪ Management: manager name; telephone; email if not the owner or investor.</li> <li>▪ Access to land: location of land if needed for business; lease number; type of lease.</li> <li>▪ Potential environmental impacts: development of land in coastal area or foreshore; ground or surface water systems; large quantities of solid waste and wastewater; sale of hazardous materials including pesticides; introduction of new species or technologies into the country; adverse effect on communities.</li> </ul> </li> <li>○ Summary information: <ul style="list-style-type: none"> <li>▪ Investors: names, nationality; shareholding percentage.</li> <li>▪ Residence permits required: investor (full name); accompanying family member (full name).</li> <li>▪ Value of proposed investment: land and buildings; plant and equipment; vehicles and furniture; engineering and installation costs; other; working capital; breakdown of funds by loan and equity.</li> </ul> </li> <li>○ Projected employment: management; skilled; non-skilled for 3 years split between local and foreign workers.</li> <li>○ Supporting documents: completed application form and statutory declaration; photocopy of business name reservation; business plan (VFIPA template) photocopy of bank statements for each investor; photocopy of passport ID</li> </ul> </li> </ul>

#	Scoring Criteria	Max	Score	Assessment
	<p>(v) there is a legal obligation for the regulator to keep information disclosed in the application process confidential; and</p> <p>(vi) there is a statutory requirement to be completed within 5 working days; and</p> <p>(vii) approval is open-ended and only needs to be varied for changes in business name, ownership, or investment activities.</p>	0.25	0.25	<p>pages for each investor; photocopy of original police clearance certificate for each investor intending to reside in Vanuatu; photocopy of purchase and sale agreements for investments involving acquisition or taking over of another business; photocopy of land documents for investments requiring access to land; photocopy of preliminary environmental impact assessment report for investment projects that have impact to the environment; photocopy of partnership documents for investment projects comprising partnership with the government.</p> <ul style="list-style-type: none"> <li>○ Statutory declaration.</li> <li>• Section 59 of the FIA provides that it is an offence for a person in the course of the administration of the FIA to disclose or improperly use information.</li> </ul>
1.2	Complex screening used in a few strategic areas:	1.50	1.50	
(a)	no; or	1.50	1.50	<ul style="list-style-type: none"> <li>• Vanuatu does not impose additional FDI screening.</li> </ul>
(b)	yes:			
(i)	uses transparent procedures and clearly defined timelines; or	1.00	0.00	
(ii)	does not use transparent procedures and clearly defined timeframes	0.25	0.00	
<b>2. Investment law general restrictions</b>				
2.1	General minimum investment requirement not imposed.	0.25	0.25	<ul style="list-style-type: none"> <li>• The FIA does not impose a general minimum investment requirement on FDI.</li> </ul>
2.2	General foreign equity restrictions not imposed.	0.25	0.25	<ul style="list-style-type: none"> <li>• The FIA does not impose a general foreign equity restriction on FDI.</li> <li>• However, Section 45(9) of the FIA imposes a constraint to foreign investor business expansion by requiring a joint venture partnership with citizen investors after three expansions into new business activities. The provision in the FIA is unclear as to whether it applies to the business entity as whole, or only to the new activity.</li> </ul>

#	Scoring Criteria	Max	Score	Assessment
2.3	General performance requirements not imposed.	0.25	0.25	<ul style="list-style-type: none"> <li>The FIA does not include general performance requirements.</li> </ul>
<b>3. Investment law sector or activity-specific restrictions</b>				
3.1	Negative list approach is used.	1.00	1.00	<ul style="list-style-type: none"> <li>The FIA uses a negative list approach.</li> </ul>
3.2	Total number of reserved and restricted activities is:	1.00	0.00	<ul style="list-style-type: none"> <li>Parts 2 and 3 of the schedule to the FIA establish the reserved list and the restricted list.</li> <li>A total of 41 activities are reserved or restricted—15 reserved activities are reserved solely for citizens, and 26 activities are open to foreign investments (subject to meeting conditions).</li> </ul>
(a)	5 or fewer; or	1.00	0.00	
(b)	6 – 10; or	0.75	0.00	
(c)	11 – 20; or	0.50	0.00	
(d)	more than 20.	0.00	0.00	
3.3	Reserved and/or restricted sectors are not export-oriented or important inputs into other businesses.	1.00	0.00	<ul style="list-style-type: none"> <li>Several restricted activities are tourism-related, such as tour operators and various types of accommodation, as the government believes the country possesses a comparative advantage in this area. Export of some products, such as kava and sandalwood (in raw forms) and non-timber forest products, are also reserved exclusively for citizens.</li> <li>Several restricted activities, such as building and construction, electricians, and coastal shipping, are potentially important inputs into other businesses.</li> </ul>
<b>4. Consistency in setting sector/activity limitations</b>				
4.1	Market access limitations are not being set in national policy or legislation outside of the investment law.	0.75	0.75	<ul style="list-style-type: none"> <li>Limitations on FDI are not imposed by government agencies outside of those identified in the FIA.</li> </ul>
4.2	Market access commitments made in bilateral and multilateral investment agreements are not less restrictive than those in the investment law.	0.25	0.00	<ul style="list-style-type: none"> <li>There are inconsistencies between Vanuatu’s market access commitments within the WTO’s General Agreement in Trade in Services (GATS) and the FIA. The GATS includes a general minimum investment requirement of VT 5 million, which Vanuatu reserves the right to increase. This requirement was never legislated and, while applied in the past, it is not a prerequisite under the FIA or currently being applied. The GATS indicates Vanuatu does not impose any activity-specific market access limitations in regard to several professional and business services including legal, accounting, engineering, architecture, and management. However, these activities are restricted in Part 3 of the Schedule to the FIA and require foreign investments to achieve minimum annual sales of VT 5 million. It is also unclear whether there is an inconsistency in regard to “general construction for buildings”. The GATS commits to no market access limitations, while Part 2 of the Schedule to the FIA reserves “residential building and construction” exclusively for citizen owned enterprises.</li> <li>Sectors with market access commitments notified under GATS (GATS/SC/148): <ul style="list-style-type: none"> <li>Horizontal <ul style="list-style-type: none"> <li>Commercial presence – Government approval is required for all foreign investors under Foreign Investment Act No. 15 of 1998 and its Amendments in effect as of the date of accession. The decision is made on objective published criteria.</li> <li>Presence of natural persons – unbound except for measures affecting the entry and temporary stay of natural persons with managerial and technical skills which are in short supply in Vanuatu or fall within the following categories: i. business managers ii. intracorporate transferees (Managers, executives and specialists, who are employees of firms that provide services within Vanuatu through a branch,</li> </ul> </li> </ul> </li> </ul>

#	Scoring Criteria	Max	Score	Assessment
				<p>subsidiary or affiliate established in Vanuatu) iii. professionals under employment contract Vanuatu provides entry in accordance with the terms established under the Labour (Work Permits) Act and its Amendments in effect as of the date of accession for bona fide business visitors and service sellers. These terms will not be made more restrictive, except in accordance with the provisions of the General Agreement on Trade in Services (GATS).</p> <ul style="list-style-type: none"> <li>o Sectoral:                     <ul style="list-style-type: none"> <li>▪ Presence of natural persons – unbound, except as indicated in the horizontal section – Accounting, auditing and bookkeeping services (CPC 862); Architectural services (CPC 8671); Engineering services (CPC 8672); Veterinary services (CPC 932); Computer and Related Services (CPC 84); Management consulting services (CPC 865); Services incidental to agriculture, hunting and forestry (CPC 88110, 88120); Courier Services; Telecommunications services: (a) Voice telephone services, (b) Packet-switched data transmission services, (c) Circuit-switched data transmission services, (d) Telex services, (e) Telegraph services, (f) Facsimile services, (g) Private leased circuit services, (h) Electronic mail, (i) Voice mail, (j) On-line information and data base retrieval, (k) Electronic data interchange, (l) Enhanced/value-added facsimile services (including store and forward, store and retrieve), (m) Code and protocol conversion, (n) On-line information and/or data processing (including transaction processing), (o) Other (Mobile services Analogue/Digital cellular services PCS (Personal Communications Services) Paging services Mobile data services); Motion picture and videotape production and distribution services (CPC 9611); General construction work for buildings (CPC 512); General construction for civil engineering (CPC 513); Franchising services (CPC 8929); All insurance and related services (CPC 812); Social services (CPC 933); Travel agencies (excluding tour operating services); Maintenance and repair of aircraft; Selling and marketing of air transport services.</li> <li>▪ Legal services, home and host country law, including international law (CPC 861)                             <ul style="list-style-type: none"> <li>• Commercial presence – commercial presence must take the form of sole proprietorship or partnership.</li> <li>• Presence of natural persons – unbound, except as indicated in the horizontal section</li> </ul> </li> <li>▪ Commission agents' services (CPC 621)                             <ul style="list-style-type: none"> <li>• Commercial presence – none, except for licensing requirements</li> <li>• Presence of natural persons – unbound, except as indicated in the horizontal section</li> </ul> </li> <li>▪ Wholesale trade services (CPC 622)                             <ul style="list-style-type: none"> <li>• Commercial presence – unbound</li> <li>• Presence of natural persons – unbound, except as indicated in the horizontal section</li> </ul> </li> <li>▪ Retailing services (CPC 631, 632, 6111, 6113, 6121)                             <ul style="list-style-type: none"> <li>• Commercial presence – unbound</li> <li>• Presence of natural persons – unbound, except as indicated in the horizontal section</li> </ul> </li> </ul> </li> </ul>

#	Scoring Criteria	Max	Score	Assessment
				<ul style="list-style-type: none"> <li>▪ Educational services (CPC 921-929)                             <ul style="list-style-type: none"> <li>• Commercial presence – none except services funded from state resources, and subject to approval by the Government of Vanuatu to ensure adequate standards of qualification of individuals and of organisations</li> <li>• Presence of natural persons – unbound, except as indicated in the horizontal section</li> </ul> </li> <li>▪ Environmental services (CPC 1-3)                             <ul style="list-style-type: none"> <li>• Commercial presence – none, except that provision of the service at the Central or local level may be subject to public monopoly or exclusive rights granted to private operators, through for instance concession contracts</li> <li>• Presence of natural persons – unbound, except as indicated in the horizontal section</li> </ul> </li> <li>▪ Banking and other related services (CPC 811-813)                             <ul style="list-style-type: none"> <li>• Commercial presence – Banks must comply with provisions of relevant banking legislation</li> <li>• Presence of natural persons – unbound, except as indicated in the horizontal section</li> </ul> </li> <li>▪ Hospital services (CPC 9311)                             <ul style="list-style-type: none"> <li>• Commercial presence – none, except services funded from state resources</li> <li>• Presence of natural persons – unbound, except as indicated in the horizontal section</li> </ul> </li> <li>▪ Hotels and restaurants (CPC 641)                             <ul style="list-style-type: none"> <li>• Commercial presence – None, except guest houses if the number of beds is less than 50 or less than ten rooms or annual turnover is less than VT 20 million; bungalows if the annual turnover is less than VT 30 million; hotels and motels if the total value of the investment is less than VT 10 million or the annual turnover is less than VT 20 million; and kava bars.</li> <li>• Presence of natural persons – unbound, except as indicated in the horizontal section</li> </ul> </li> </ul> <p>• Similar inconsistencies exist with PACER Plus (Annex 7-A). PACER Plus also states the issuing of foreign investor certificates is not conditional on the level of foreign ownership. However, Section 45(9) the FIA imposes a joint venture requirement on foreign investors that expand into new activities more than three times.</p>
<b>5. Review of investment law limitations and restrictions</b>				
5.1	The investment law requires review of limitations or restrictions to:	0.75	0.50	

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COUNTRY ASSESSMENT MATRICES: VANUATU

#	Scoring Criteria	Max	Score	Assessment
(a)	take place periodically, and include public consultations; and	0.25	0.25	<ul style="list-style-type: none"> <li>Sections 20–24 and 26–31 of the FIA requires the reserved and restricted lists be reviewed every 2 years using public consultation. The lists have not been reviewed since their introduction in 1998.</li> </ul>
(b)	be decided using clearly defined principles; and	0.25	0.00	<ul style="list-style-type: none"> <li>The FIA does not provide for any principles for the review of reserved or restricted activities.</li> <li>Vanuatu’s National Investment Policy Statement (NIPS) 2019, however, provides some guidance. The NIPS articulates the following principles to be used in the review process: <ul style="list-style-type: none"> <li>To encourage a vibrant and competitive economy, the number of reserved and restricted activities should be kept as short as possible and reduced over time.</li> <li>Any activities added to either list must be: <ul style="list-style-type: none"> <li>aligned with a clearly defined policy objective whose achievement will be monitored over time;</li> <li>consistent with international commitments and obligations made in international, regional, and bilateral trade and investment agreements;</li> <li>respect the objective to increase citizen business ownership and control over key natural resources, where such activities should not be reserved or restricted if they are currently undeveloped, i.e., there are already several businesses participating in it; and</li> <li>must not produce intermediate goods or services that are important inputs into the operations of other businesses, particularly those that are export-oriented.</li> </ul> </li> <li>Minimum investment requirements should be used sparingly. If used as a requirement in the issuing of residence visas to foreign investors intending to reside in the country to implement their investments, the level should be based on analysis of levels used in comparator countries.</li> <li>Activities included on the lists must be clearly defined, based on Vanuatu’s standard industry classification system, to enable their effective monitoring and enforcement.</li> </ul> </li> </ul>
(c)	provide that an existing foreign investor affected by the introduction of a new limitation or restriction can continue to operate in the activity.	0.25	0.25	<ul style="list-style-type: none"> <li>Sections 21(2) and 27(2) of the FIA provide a guarantee to foreign investors that once registered to participate in an activity that becomes reserved or restricted in the future, they may continue to participate in that activity unchanged.</li> </ul>
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>5.50</b>	<b>MODERATE</b>

## 2. Investment Guarantees and Obligations

#	Scoring Criteria	Max	Score	Assessment
<b>1. National treatment</b>				
1.1	Investment law includes a commitment to the principle of national treatment with either no exceptions, or clearly acknowledged exceptions relating to the establishment, expansion, management, operation, and protection of their investments.	1.50	0.00	<ul style="list-style-type: none"> <li>• Section 53 of the FIA requires the VFIPA Board and CEO to ensure foreign investors, having obtained a foreign investment certificate, are given treatment in respect of the establishment, expansion, and operation of the investment no less favorable than that accorded to citizen investors in respect of a comparable investment and investment activities.</li> <li>• The FIA guarantee fails to acknowledge limitations in access to land which are set out in the Constitution (prohibition of foreign citizens owning land), as well as new areas of discrimination that have appeared: <ul style="list-style-type: none"> <li>○ An agricultural business license was introduced in 2018 that only applies to foreign investors.</li> <li>○ A Small Business Development Bill is intended to provide incentives to encourage and support Ni-Vanuatu business ownership and growth.</li> </ul> </li> <li>• The NIPS includes a national treatment guarantee and acknowledges the above restrictions imposed on land ownership and programs aimed at stimulating indigenous business ownership.</li> <li>• Vanuatu is a signatory to GATS. Article XVII requires that “in the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any Member, in respect of all measures affecting the supply of services, treatment no less favorable than it accords to its own services and service providers.”</li> <li>• Vanuatu has notified the following limitations on national treatment under GATS: <ul style="list-style-type: none"> <li>○ Horizontal: <ul style="list-style-type: none"> <li>▪ Commercial presence: Subject to limitation on purchase of real estate. The Vanuatu Constitution prohibits freehold ownership of land. Indigenous Ni-Vanuatu alone can own land under customary law provisions. Indigenous citizens and expatriates can hold land in leasehold.</li> </ul> </li> <li>○ Sector-specific: <ul style="list-style-type: none"> <li>▪ Commission agents’ services (commercial presence): Non-citizens and non-resident foreign investors must pay an additional annual fee of VT 91,800 and receive an approval certificate from the Vanuatu Investment Promotion Authority.</li> <li>▪ Wholesale trade services (commercial presence): Non-citizens and non-resident foreign investors must pay an additional annual fee of VT 91,800 and receive an approval certificate from the Vanuatu Investment Promotion Authority.</li> <li>▪ Environmental services (commercial presence): None, except that provision of the service at the central or local level may be subject to public monopoly or exclusive rights granted to private operators, e.g., through concession contracts.</li> <li>▪ Hospital services (commercial presence): None, except services funded from state resources.</li> </ul> </li> </ul> </li> <li>• Chapter 7, Article 6 of PACER Plus requires parties to the Agreement in reference to the sectors specified in Annex 7-A to accord to services and service supplies of another party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own services and service suppliers. This is subject to any conditions or qualifications specified in Annex 7-A.</li> </ul>

				<ul style="list-style-type: none"> <li>• In relation to Chapter 7, Vanuatu has notified the following limitations on national treatment for commercial presence:                     <ul style="list-style-type: none"> <li>○ Horizontal:                             <ul style="list-style-type: none"> <li>▪ The Vanuatu Constitution prohibits freehold ownership of land. Only indigenous Ni-Vanuatu can own land. Indigenous citizens and expatriates can hold land in leasehold.</li> </ul> </li> <li>○ Sectoral:                             <ul style="list-style-type: none"> <li>▪ Audio-visual, motion picture and videotape production and distribution services: none, except support programs established and funded by the Government of Vanuatu to preserve or promote the cultural identity of Vanuatu.</li> <li>▪ Educational services: none, except services funded from state resources.</li> <li>▪ Sewage services: none, except that provision of the service at the central or local level may be subject to public monopoly or exclusive rights granted to private operators, e.g., through concession contracts.</li> <li>▪ Refuse disposal services: none, except that provision of the service at the central or local level may be subject to public monopoly or exclusive rights granted to private operators, e.g., through concession contracts.</li> <li>▪ Sanitation and similar services: none, except that provision of the service at the central or local level may be subject to public monopoly or exclusive rights granted to private operators, e.g., through concession contracts.</li> <li>▪ Health-related and social services, hospital services: none, except services funded from state resources.</li> <li>▪ Transport services, international transport (freight and passengers) (CPC 7211 and 7212), excluding cabotage transport: unbound.</li> </ul> </li> </ul> </li> <li>• Chapter 9, Article 6 of PACER Plus includes a commitment to according investors and covered investments of investors of any other Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the acquisition, establishment, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.</li> <li>• In relation to Chapter 9, Vanuatu has notified the following limitations on national treatment:                     <ul style="list-style-type: none"> <li>- Horizontal:                             <ul style="list-style-type: none"> <li>▪ Vanuatu reserves the right to adopt or maintain any measure requiring that a majority of the board of directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in Vanuatu, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.</li> <li>▪ Vanuatu reserves the right to adopt or maintain any measure in: (i) sectors in which no sector-specific commitments have been undertaken in its Schedule of Commitments on Investment or in its Schedule of Specific Services Commitments; and (ii) areas reserved to the citizens of Vanuatu, as listed in the horizontal sections of the Schedule of Commitments on Investment (National Treatment) or of the Schedule of Specific Services Commitments on Trade in Services.</li> </ul> </li> </ul> </li> </ul>
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				<ul style="list-style-type: none"> <li>Vanuatu reserves the right to adopt or maintain any measure: a) where it wholly owns or has effective control over an enterprise, as well as in relation to the transfer or disposal of government-owned entities or assets; or b) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force.</li> </ul>
<b>2. Most-Favored-Nation (MFN) treatment</b>				
2.1	Investment law includes a specific commitment to the principle of non-discrimination in terms of nationality.	1.50	0.00	<ul style="list-style-type: none"> <li>The FIA does not specifically guarantee MFN treatment. The NIPS provides a commitment to MFN treatment.</li> <li>Vanuatu is a signatory to GATS. Article II requires Vanuatu to immediately and unconditionally afford to service and service suppliers of other Members treatment no less favorable than it accords to the services or service suppliers of any other country.</li> <li>Vanuatu has notified an MFN exemption for waiver of normal investment and rights of temporary sojourn obligations of Vanuatu law for citizens and permanent residents of MSG countries (GATS/EL/148)</li> <li>Chapter 7, Article 3 provides that with respect to measures covered by the Chapter, each Party shall accord immediately and unconditionally to services and service suppliers of another Party treatment no less favorable than that it accords to like services and service suppliers of a non-party.</li> <li>Chapter 9, Article 7 of PACER Plus includes a commitment by parties to accord to investors and their investments of any other Party to the Agreement treatment no less favorable than it accords, in like circumstances, to investors of a non-party or to their investments with respect to the acquisition, establishment, expansion, management, conduct, operation, and sale or other disposition of investments in its territory. <ul style="list-style-type: none"> <li>Vanuatu has listed MFN exemptions in Annex I to facilitate management of existing trade agreements, existing and future measures involving aviation, fisheries, and maritime matters, regional integration, cultural industries, and core government functions.</li> </ul> </li> <li>There do not appear to be policies or legislation in place that discriminate between foreign investors based on their nationality.</li> </ul>
<b>3. Fair and equitable treatment</b>				
3.1	Investment law includes a commitment of fair and equitable treatment that includes reference to the minimum standard of international law, and guarantees investors will not be subject to unreasonable or discriminatory measures and will have equal access to due process of law.	1.50	0.00	<ul style="list-style-type: none"> <li>Section 53 of the FIA requires the VFIPA Board and CEO to ensure foreign investors, having obtained a foreign investment certificate, are given treatment in respect of the establishment, expansion, and operation of the investment no less favorable than that accorded to citizen investors in respect of a comparable investment and investment activities.</li> <li>The FIA guarantee fails to acknowledge limitations in access to land which are set out in the Constitution (prohibition of foreign citizens owning land), as well as new areas of discrimination that have appeared: <ul style="list-style-type: none"> <li>An agricultural business license was introduced in 2018 that only applies to foreign investors.</li> <li>A Small Business Development Bill is intended to provide incentives to encourage and support Ni-Vanuatu business ownership and growth.</li> </ul> </li> <li>The NIPS includes a national treatment guarantee and acknowledges the above restrictions imposed on land ownership and programs aimed at stimulating indigenous business ownership.</li> <li>Vanuatu is a signatory to GATS. Article XVII requires that “in the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any Member, in respect of all measures affecting the supply of services, treatment no less favorable than it accords to its own services and service providers.”</li> <li>Vanuatu has notified the following limitations on national treatment under GATS: <ul style="list-style-type: none"> <li>Horizontal:</li> </ul> </li> </ul>

				<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>▪ Commercial presence: Subject to limitation on purchase of real estate. The Vanuatu Constitution prohibits freehold ownership of land. Indigenous Ni-Vanuatu alone can own land under customary law provisions. Indigenous citizens and expatriates can hold land in leasehold.</li> </ul> </li> <li>○ Sector-specific:                             <ul style="list-style-type: none"> <li>▪ Commission agents' services (commercial presence): Non-citizens and non-resident foreign investors must pay an additional annual fee of VT 91,800 and receive an approval certificate from the Vanuatu Investment Promotion Authority.</li> <li>▪ Wholesale trade services (commercial presence): Non-citizens and non-resident foreign investors must pay an additional annual fee of VT 91,800 and receive an approval certificate from the Vanuatu Investment Promotion Authority.</li> <li>▪ Environmental services (commercial presence): None, except that provision of the service at the central or local level may be subject to public monopoly or exclusive rights granted to private operators, e.g., through concession contracts.</li> <li>▪ Hospital services (commercial presence): None, except services funded from state resources.</li> </ul> </li> </ul> </li> <li>• Chapter 7, Article 6 of PACER Plus requires parties to the Agreement in reference to the sectors specified in Annex 7-A to accord to services and service suppliers of another party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own services and service suppliers. This is subject to any conditions or qualifications specified in Annex 7-A.</li> <li>• In relation to Chapter 7, Vanuatu has notified the following limitations on national treatment for commercial presence:             <ul style="list-style-type: none"> <li>○ Horizontal:                     <ul style="list-style-type: none"> <li>▪ The Vanuatu Constitution prohibits freehold ownership of land. Only indigenous Ni-Vanuatu can own land. Indigenous citizens and expatriates can hold land in leasehold.</li> </ul> </li> <li>○ Sectoral:                     <ul style="list-style-type: none"> <li>▪ Audio-visual, motion picture and videotape production and distribution services: none, except support programs established and funded by the Government of Vanuatu to preserve or promote the cultural identity of Vanuatu.</li> <li>▪ Educational services: none, except services funded from state resources.</li> <li>▪ Sewage services: none, except that provision of the service at the central or local level may be subject to public monopoly or exclusive rights granted to private operators, e.g., through concession contracts.</li> <li>▪ Refuse disposal services: none, except that provision of the service at the central or local level may be subject to public monopoly or exclusive rights granted to private operators, e.g., through concession contracts.</li> <li>▪ Sanitation and similar services: none, except that provision of the service at the central or local level may be subject to public monopoly or exclusive rights granted to private operators, e.g., through concession contracts.</li> <li>▪ Health-related and social services, hospital services: none, except services funded from state resources.</li> </ul> </li> </ul> </li> </ul>
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				<ul style="list-style-type: none"> <li>▪ Transport services, international transport (freight and passengers) (CPC 7211 and 7212), excluding cabotage transport: unbound.</li> <li>• Chapter 9, Article 6 of PACER Plus includes a commitment to according investors and covered investments of investors of any other Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the acquisition, establishment, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.</li> <li>• In relation to Chapter 9, Vanuatu has notified the following limitations on national treatment:             <ul style="list-style-type: none"> <li>- Horizontal:                 <ul style="list-style-type: none"> <li>▪ Vanuatu reserves the right to adopt or maintain any measure requiring that a majority of the board of directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in Vanuatu, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.</li> <li>▪ Vanuatu reserves the right to adopt or maintain any measure in: (i) sectors in which no sector-specific commitments have been undertaken in its Schedule of Commitments on Investment or in its Schedule of Specific Services Commitments; and (ii) areas reserved to the citizens of Vanuatu, as listed in the horizontal sections of the Schedule of Commitments on Investment (National Treatment) or of the Schedule of Specific Services Commitments on Trade in Services.</li> <li>▪ Vanuatu reserves the right to adopt or maintain any measure: a) where it wholly owns or has effective control over an enterprise, as well as in relation to the transfer or disposal of government-owned entities or assets; or b) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force.</li> </ul> </li> </ul> </li> </ul>
<b>4. Expropriation</b>				
4.1	Investment law includes a commitment ensuring investors will not be subject to direct expropriation or measures with a similar effect, except for a public purpose, in a non-discriminatory way in accordance with laws and procedures, and subject to prompt, adequate, and effective compensation.	1.50	0.00	<ul style="list-style-type: none"> <li>• Section 52 of the FIA guarantees that the government must not expropriate or nationalize an investment of any foreign investor with a foreign investment certificate except for a public purpose or for national interest, and do so in a non-discriminatory manner in accordance with due process of law.</li> <li>• The guarantee in section 52 does not however provide for prompt, adequate, and effective compensation.</li> <li>• The Compulsory Land Acquisition Act 1992 deals with land acquisition consistent with the guarantee. It specifies market value compensation will be paid.</li> <li>• Aspects of the Land Leases Act, however, appear to be inconsistent with the guarantee. Under the Act, investors may lose a land lease if they fail to develop it within a specified period. Decision-making around the issue lacks transparency. They also will lose a land lease if they have been struck from the company register, even if they have been subsequently reinstated.</li> <li>• Chapter 9, Article 13 of PACER Plus provides a more detailed commitment regarding expropriation than what is included in the FIA. It specifically covers both direct and indirect expropriation and makes a commitment that compensation will be equivalent to the fair market value of the expropriated investment at the time when expropriation was publicly announced or occurred. Annex 9-C of the Agreement provides additional clarification regarding how indirect expropriation is defined (through case-by-case fact-based inquiries) and clarifies that non-discriminatory regulatory actions by a Party designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety and the environment, do not constitute indirect expropriation.</li> </ul>
<b>5. Convertibility and repatriation of funds</b>				

5.1	Investment law guarantees free and prompt transfer of funds related to foreign investment in a freely convertible currency.	1.00	1.00	<ul style="list-style-type: none"> <li>Section 54 of the FIA guarantees that foreign investors with a foreign investment certificate may transfer profits (including capital gains, dividends, royalties, loan payments, and liquidations) in any currency, to any person inside or outside Vanuatu.</li> <li>Article 9, Chapter 14 of PACER Plus commits to allowing all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Transfers include contributions to capital, including the initial contribution; profits, capital gains, dividends, royalties, license fees, technical assistance and technical and management fees, interest, and other current income accruing from any covered investment; proceeds from the total or partial sale or liquidation of any covered investment; and payments made under a contract, including a loan agreement. Each Party commits to allowing such transfers to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer. Under the commitment, parties may delay a transfer through the equitable, non-discriminatory and good faith application of its laws and regulations related to issues such as bankruptcy, criminal offences, and taxation.</li> </ul>
5.2	Host country does not impose any restrictions on the free and prompt transfer of funds, or if it does, these exceptions are identified.	0.50	0.50	<ul style="list-style-type: none"> <li>The FIA guarantee does not limit application of any other legislation requiring deduction of withholding of any tax or levy from a payment to be made.</li> <li>The current Reserve Bank of Vanuatu policy does not place any restrictions on the process by which the repatriation of capital and profit occurs. Vanuatu's foreign exchange reserves have consistently remained above the Bank's minimum threshold of import cover.</li> </ul>
<b>6. Dispute settlement</b>				
6.1	The country has ratified (and, where applicable to the country's legal system, domestically enacted) international conventions for settlement of investment disputes:	1.50	0.00	
(a)	Convention on the Settlement of Investment Disputes between states and nationals of other states (ICSID); and	0.75	0.00	<ul style="list-style-type: none"> <li>Vanuatu has not ratified ICSID.</li> <li>Section 55 of the FIA provides that ICSID applies to the management and settlement of investment disputes under the FIA.</li> </ul>
(b)	New York Convention on Recognition and Enforcement of Arbitral Awards.	0.75	0.00	<ul style="list-style-type: none"> <li>Vanuatu has not ratified the New York Convention and lacks arbitration legislation.</li> </ul>
<b>7. Investor behavior</b>				
7.1	Investment law includes a requirement that foreign investors:	1.00	1.00	
(a)	comply with all domestic laws and regulations; and	0.50	0.50	<ul style="list-style-type: none"> <li>Section 35 of the FIA provides that an investor must not carry out an investment activity without a valid certificate of registration.</li> <li>Section 36 of the FIA provides that registration under the FIA does not relieve a foreign investor from complying with any other law or grant, or entitle the investor to any benefits under another law.</li> <li>Section 46(1)(a) provides that it is a condition of registration for the certificate holder to implement the proposed investment in accordance with the laws of Vanuatu and the business plan submitted in the application.</li> </ul>
(b)	provide periodic statistical reports concerning their operations.	0.50	0.50	<ul style="list-style-type: none"> <li>Section 33 of the FIA requires certificate holders to submit annual reports (by 28 February) regarding their operations.</li> </ul>
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>2.50</b>	<b>WEAK</b>

### 3. Foreign Investor Residence in Country

#	Scoring Criteria	Max	Score	Assessment
<b>1. Screening approach</b>				
1.1	Country has a temporary residence permit for investors / businesspersons available to:	2.00	1.00	
(a)	owners of a registered foreign investment (immigrant investors) without the need to apply for a separate work permit; and	1.00	1.00	<ul style="list-style-type: none"> <li>Foreign investors identified as an owner/shareholder of a registered foreign investment have access to a streamlined process for obtaining residence visas from the Department of Vanuatu Immigration and Passport Service (DVIPS). Residence visas are organized into classes, with a specific class identified for foreign investors.</li> <li>Foreign investors are eligible for the Foreign Investor Residence Visa if they intend to reside in Vanuatu for more than 12 months.</li> </ul>
(b)	designated representatives / intra-company transfers of a registered overseas-based investment without the need to apply for a separate work permit.	1.00	0.00	<ul style="list-style-type: none"> <li>Designated representatives/intra-company transfers are eligible for the Employee Residence Visa if they intend to reside in Vanuatu for more than 12 months. A holder of Employee Residence Visa must have permission to commence or continue working under the Labour (Work Permits) Act [Cap. 187]. The work permit is issued by DOLES.</li> </ul>
1.2	If 1.1(a) and/or (b) is met, then the temporary residence permit is:	3.50	3.50	
(a)	administered solely by the immigration authority and issued without approvals or support from other authorities (excluding FDI entry requirements); and	0.50	0.50	<ul style="list-style-type: none"> <li>DVIPS solely manages the Foreign Investor Residence Visa.</li> </ul>
(b)	issued according to the following decision criteria:	2.00	2.00	
	(i) only checks ensuring that the foreign investment has successfully met FDI entry requirements, the person has a valid passport and passes objective character and health tests and has a minimum amount of funds for residence; or	<u>2.00</u>	<u>2.00</u>	<ul style="list-style-type: none"> <li>Section 37 of the Immigration Act 2010 provides the base criteria for the issuance of a visa: <ul style="list-style-type: none"> <li>The person is not a prohibited immigrant.</li> <li>A determination under Section 85 is not in force in relation to the person.</li> <li>The person passes the character test under Section 38.</li> <li>The person is not suffering from a contagious or other disease, or a mental condition, which makes his or her presence in Vanuatu a risk to the health of the community in Vanuatu.</li> <li>Any security required to be provided under Part 8 in relation to the visa being applied for has been provided to the satisfaction of the Principal Immigration Officer.</li> <li>The person has the financial means to support himself or herself, and all of his or her dependants (if any).</li> <li>Any other criteria prescribed by the regulations.</li> </ul> </li> <li>Regulation 12(4) of the Immigration Visa Regulation Order 2011 provides additional requirements for the grant of a Foreign Investor Residence Visa: <ul style="list-style-type: none"> <li>A foreign investment registration certificate by VFIPA.</li> <li>A business licence to operate in Vanuatu.</li> </ul> </li> </ul>

#	Scoring Criteria	Max	Score	Assessment
	(ii) meets the requirements of (i), plus the enterprise must satisfy a minimum investment threshold; or	1.50	0.00	
	(iii) meets the requirements of (i), plus meet a range of additional, investor-specific requirements; and	0.50	0.00	
(c)	processed in accordance with a statutory processing period of 20 working days or less.	1.00	1.00	<ul style="list-style-type: none"> <li>Section 42 of the Immigration Act provides a statutory requirement for the Director Immigration, as far as practicable, to process investor class visa applications within 5 working days.</li> <li>Neither the visa nor work permit processes monitor and report on application processing times. They both, however, appear to operate reasonably efficiently once applications have been lodged. In cases where a work permit and residence visa are required, the two-stage process typically reduces the effective duration of the permit/visa below the 1-year term.</li> </ul>
<b>2. Duration of investor residence permit</b>				
2.1	Investor-class temporary residence permits are issued using a two-stage process: (a) initially for a period sufficient to enable the investor to demonstrate they have successfully established themselves, such as 1 year, and then (b) once establishment has been verified, for longer periods.	1.00	0.00	<ul style="list-style-type: none"> <li>Vanuatu does not provide two-stage investor class visas.</li> <li>Section 30(1) of the Immigration Act provides for residence visas for periods of 1-10 years. Section 2(3) of the Labour (Work Permits) Act allows work permits for a term of up to 3 years. It is a policy of DVIPS and DOLES to issue residence visas and work permits for a maximum term of 1 year. The policy is unrelated to investment establishment, as subsequent residence visas and work permits are similarly issued on a yearly basis.</li> <li>A 2018 amendment to the Labour (Work Permits) Act restricts issue of a work permit to a foreign citizen to a maximum of 4 years, with the expectation that a counterpart would be trained during this period and the position then localized.</li> </ul>
2.2	Foreign investors associated with established foreign investments may eventually apply for residence permits with duration of at least 5 years.	2.00	2.00	<ul style="list-style-type: none"> <li>Section 30A of the Immigration Act provides for a permanent residence option with a term limited to a maximum of 10 years, for which investors are eligible. Permanent residence visas are issued at the discretion of the Director Immigration based on the nature term and value of the investment. Issuance of permanent residence visas is uncommon.</li> <li>Section 20 of the Citizenship Act provides for the ability for the President, on the advice of the Prime Minister, to confer honorary citizenship on any person with such privileges or exemptions as may be prescribed.</li> <li>Vanuatu offers several citizenship by investment programs: <ul style="list-style-type: none"> <li>Capital Investment Immigration Plan: enabled by Section 13C of the Citizenship Act [Cap 112], foreigners can obtain citizenship in addition to their existing citizenships, with a citizenship (certificate) fee of USD 260,000 (including the applicant, spouse, and one child under 18), a Financial Intelligence Unit diligence fee of USD 5,000, and an application fee of USD 250.</li> <li>Vanuatu Contribution Program: enabled by Section 13D of the Citizenship Act, foreigners can obtain Vanuatu citizenship in addition to their existing citizenships, with a citizenship (certificate) fee of at least USD 130,000 (for a single applicant) to the designated agent, a Financial Intelligence Unit diligence fee of USD 5,000, and an application fee of VT 5,000 (~ USD 45), payable to the Citizenships Office and Commission. This program has an exclusive designated applicant and is primarily aimed at the Chinese market.</li> <li>Development Support Program: enabled by Section 13E of the Citizenship Act, foreigners can obtain Vanuatu citizenship in addition to their existing citizenships, with a citizenship (certificate) fee of at least USD 130,000 (for a single applicant) to the designated agent, a Financial Intelligence Unit diligence</li> </ul> </li> </ul>

#	Scoring Criteria	Max	Score	Assessment
				<p>fee of USD 5,000, and an application fee of VT 5,000 (~ USD 45), payable to the Citizenships Office and Commission.</p> <ul style="list-style-type: none"> <li>o Citizen Real Estate Option Program: enabled by Section 13F of the Citizenship Act, foreigners can obtain Vanuatu citizenship in addition to their existing citizenships, with investment in an option to purchase property that are designated “Vanuatu Government Approved Projects” (constructed houses, apartments, and condominiums). The minimum sale price for a qualifying property is USD 200,000, although applicants may acquire a 50% interest in a property as a tenant-in-common for a minimum USD 100,000. All properties are currently in proposed tourist developments. Additional fees include a Financial Intelligence Unit diligence fee of USD 5,000, and an application fee of VT 5,000 (~ USD 45), payable to the Citizenships Office and Commission.</li> </ul>
<b>3. Resident permit fee</b>				
3.1	Total temporary residence permit cost for a foreign investor over a 5-year period:	1.50	0.00	<ul style="list-style-type: none"> <li>• Neither fee regime (for the residence visa or the work permit) appears to be cost recovery intended.</li> <li>• The residence visa fee for a person applying for a 5-year visa is VT 259,200 (~USD 2,321), on the assumption that a 5-year visa is issued. The current practice of yearly applications would cost VT 288,000 (~USD 2,578).</li> <li>• The cost for 4 years of a work permit (the maximum) is VT 800,000 (~USD 7,163). This assumes four individual charges of VT 200,000 (~1,790), comprising a VT 20,000 application fee and a VT 80,000 work permit tax.</li> <li>• Accordingly, the fee for a resident investor would be approximately USD 2,578. A designated representative or intra-company transferee cannot stay in Vanuatu for 5 years.</li> </ul>
(a)	less than USD 1,000; or	1.50	0.00	
(b)	USD 1,001 – USD 2,000.	0.75	0.00	
<b>OVERALL SCORE</b>		<b>10.00</b>	<b>6.50</b>	<b>MODERATE</b>

## 4. Foreign Direct Investment Monitoring and Reporting

#	Scoring Criteria	Max	Score	Assessment
<b>1. Tracking FDI across government</b>				
1.1	Government regulators have the ability to efficiently communicate with one another about foreign investors through the use of unique business identifiers.	1.50	0.00	<ul style="list-style-type: none"> <li>Unique business identifiers are not in use.</li> <li>VFIPA uses business and/or investor names when communicating with other government agencies about foreign investments. This has created difficulties in the past, such as during efforts to use National Provident Fund data to develop a picture of employment numbers generated by foreign investments.</li> </ul>
<b>2. Monitoring and enforcement</b>				
2.1	Transparent criteria define when an FDI is considered established.	0.75	0.00	<ul style="list-style-type: none"> <li>Section 47(1)(c) of the FIA requires foreign investors to commence carrying out investment activities listed on their certificates within 12 or 18 months, depending on the size of the investment.</li> <li>There are no written criteria (in legislation or otherwise) for assessing this requirement.</li> </ul>
2.2	Regulators have legislated inspection powers to determine if the conditions of FDI registration/visas are being breached.	0.75	0.75	<ul style="list-style-type: none"> <li>Section 46 of the FIA includes as a condition of registration a requirement for certificate holders to facilitate the VFIPA Board and staff's monitoring activities, including responding to any queries in regard to investor operations. Failure to comply with this obligation is grounds for revoking a certificate.</li> <li>Immigration and labor officers have legislated authority to enter business premises and request documentation (Immigration Act, Section 13 and Labour (Work Permits) Act, Section 15(2)).</li> </ul>
2.3	Offences and penalties are specified in legislation and:	0.50	0.50	<ul style="list-style-type: none"> <li>Offences and penalties are clearly specified in legislation: FIA (Part 8), Immigration Act (Part 11), and the Labour (Work Permits) Act (Section 18). Penalties are issued on the spot by VFIPA, Immigration and Labour, but can be contested through the court system.</li> <li>FIRCs, work permits, and residence permits may also be cancelled under circumstances specified in legislation: FIA (Section 47), Immigration Act (Part 4, Division 5) and the Labour (Work Permits) Act (Section 5G).</li> </ul>
(a)	address all legislated requirements; or	0.50	0.50	
(b)	address some but not all legislated requirements.	0.25	0.00	
2.4	Regulators proactively monitor:	2.00	0.00	<ul style="list-style-type: none"> <li>VFIPA lacks a process for proactively monitoring establishment requirements. In the past it has relied on annual registration renewals as an indicator of whether an investor is operational, along with information it collects through a mandatory investor annual survey form.</li> <li>VFIPA has five staff officers (~35% of its total staffing) dedicated to the regulatory function of processing FIRC applications and monitoring/enforcing foreign investor compliance with the Act. To date, the majority of staff time has been devoted to processing registration applications and issuing certificates.</li> </ul>
(a)	FDI to ensure establishment requirements are met; and	1.00	0.00	
(b)	FDI compliance with registration and residence visa requirements.	1.00	0.00	
<b>3. Appeals</b>				
3.1	Foreign investors have the right to appeal FDI	1.00	1.00	



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#	Scoring Criteria	Max	Score	Assessment
(a)	registration decisions, including: denial of an application; and	0.50	0.50	<ul style="list-style-type: none"> <li>Section 50 of the FIA enables foreign investors to appeal decisions made by the CEO VFIPA in regard to denial of applications and revocation of certificates. Appeals are made to the VFIPA board using a prescribed form, and must be made within 1 month of receiving notification of the decision. The board has 2 months after its receipt of the request to make a determination. Decisions must be communicated to the appellant in writing and include justification.</li> </ul>
(b)	revocation of registration.	0.50	0.50	
3.2	Foreign investors have the right to appeal residence permit decisions, including:	1.00	1.00	<ul style="list-style-type: none"> <li>Section 58 of the Immigration Act and Part 3A of the Labour (Work Permits) Act allow appeals of decisions in regard to denial of residence visa and work permit applications, as well as their revocation. Residence visa appeals are made to the minister responsible for immigration and must be lodged within 14 days of the notice of decision. The minister has 14 days to make a decision. Work permit appeals are made to an Appeals Committee consisting of the Director General Ministry of Internal Affairs, CEO VFIPA, Director Immigration, and a person nominated by the Judicial Service Commission, and must be lodged within 7 days of the notice of decision. The Committee has 30 days to make a decision. Appeal decisions in both processes must be communicated in writing and include justification. Appeal decisions by the minister responsible for immigration can be appealed to the Supreme Court. The appeal must be made within 21 days of the minister's notice of decision.</li> </ul>
(a)	denial of application; and	0.50	0.50	
(b)	revocation of residence permit.	0.50	0.50	
<b>4. Reporting</b>				
4.1	Non-commercially sensitive information about a registered foreign investment's ownership and investment activities is:	1.50	0.50	<ul style="list-style-type: none"> <li>Section 32 of the FIA requires VFIPA to maintain a register of foreign investment activities, which is available to the public on a fee basis. The contents are to be defined in Regulations, but must not include commercially sensitive data.</li> <li>The register is not available online.</li> <li>VFIPA currently uses an excel spreadsheet to record information concerning issued foreign investment certificates. It is organized by certificate number and includes the following information: business name, owner names, source country, business category and activities, economic sector, location of activities, and proposed investment and employment. Public access to information is limited to office hours and must be extracted from the spreadsheet by a VFIPA officer.</li> </ul>
(a)	available online; or	1.50	0.00	
(b)	only available through requests to the regulator.	0.50	0.50	
4.2	Periodic FDI reports address the following:	1.50	0.25	<ul style="list-style-type: none"> <li>Section 66 of the FIA requires the CEO VFIPA to prepare an annual report by 30 April each year summarizing investment activities carried out by foreign investors, but does not specify its form or content.</li> <li>VFIPA's most recent annual report is for 2018. It provides information on the number of new investments approved during the year, as well as variations and renewals of existing investments. The report does not identify the rate of conversion between registration and implementation. Annual reports also largely report on planned benefits, although the 2018 annual report identified total employment associated with foreign investors that had renewed the certificates in the context of total formal employment as reported by the Vanuatu National Provident Fund (VNPF). This information, provided by certificate holders, was not verified by VNPF data.</li> </ul>
(a)	make up of FDI in the country; and	0.25	0.25	
(b)	extent to which investment actually occurs; and	0.25	0.00	
(c)	actual impacts associated with FDI.	1.00	0.00	
OVERALL SCORE		10.00	4.00	<b>WEAK</b>

## 5. Investment Promotion

#	Scoring Criteria	Max	Score	Assessment
<b>1. Strategic approach to investment</b>				
1.1	IPI is guided by clear and realistic goals against which the IPI's performance is managed.	2.00	0.00	<ul style="list-style-type: none"> <li>The Government of Vanuatu has not established quantifiable investment goals for VFIPA.</li> </ul>
1.2	IPI has its services driven by a written, multi-year investment promotion strategy.	2.00	0.00	<ul style="list-style-type: none"> <li>Section 9 of the FIA stipulates that the VFIPA board must determine, approve, and monitor the authority's strategic direction. To date, VFIPA has not developed an investment promotion strategy for this purpose.</li> <li>Sector priorities in the National Sustainable Development Plan 2016-2030 include: agribusiness (focused on import substitution and linkages with tourism), tourism (expanding offerings and deepening integration with the rural economy), fisheries (encouraging sustainable development), and manufacturing (adding value to commodities currently being exported).</li> </ul>
<b>2. Organizational form</b>				
2.1	IPI is an:	1.50	1.50	<ul style="list-style-type: none"> <li>Part 2 of the FIA establishes VFIPA as an autonomous agency reporting to the minister responsible for industry and trade. A board with authority to set staff pay scales oversees the agency.</li> </ul>
(a)	autonomous agency; or	1.50	1.50	
(b)	integral unit of a major ministry; or	1.00	0.00	
(c)	sub-unit of a major ministry.	0.50	0.00	
2.2	IPI has access to private sector experience in an oversight or advisory role:	0.50	0.50	<ul style="list-style-type: none"> <li>Section 42(2) of the FIA establishes VFIPA's seven-person Board, of which three (42%) are from the private sector.</li> <li>Membership comprises:                             <ul style="list-style-type: none"> <li>Four government ex-officio members—Director General of the ministry responsible for trade and industry (chair), Director General of the ministry responsible for agriculture, livestock, forestry, fisheries and biosecurity, and Directors of the department responsible for strategic policy and planning, and the Department of Local Authorities.</li> <li>Three representatives nominated by key private sector umbrella organizations—Vanuatu Chamber of Commerce and Industry, Vanuatu Hotels and Resorts Association, and Vanuatu Finance Center Association. The minister responsible for industry and trade appoints the three nominated private sector representatives.</li> </ul> </li> </ul>
(a)	board has at least 40% private sector representation; or	0.50	0.50	
(b)	board has some private sector representation.	0.25	0.00	
<b>3. IPI functions</b>				
3.1	IPI's role is:	1.00	0.00	

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#	Scoring Criteria	Max	Score	Assessment
(a)	limited solely to providing investment promotion services; or	1.00	0.00	<ul style="list-style-type: none"> <li>Section 7 of the FIA requires VFIPA to play a regulatory role (issue FIRC and monitor/enforce foreign investor compliance with the FIA), as well as advise the Council of Ministers on all matters related to foreign investment and deliver investment promotion services.</li> </ul>
(b)	broader than investment promotion but does not involve regulatory responsibilities such as FDI monitoring and enforcement.	0.50	0.00	<ul style="list-style-type: none"> <li>VFIPA separates its regulatory and promotion functions into two divisions. Despite this internal separation, its public perception has been that of a regulator. VFIPA has submitted a request to government for additional funding in 2021 to redesign its office space to physically separate the divisions in an effort to give more prominence to the promotion function.</li> </ul>
<b>4. IPI activities</b>				
4.1	IPI maintains an investment promotion website with the following up to date information:	1.10	0.70	<ul style="list-style-type: none"> <li>VFIPA's efforts to date have focused on provision of marketing and facilitation services. Its website (<a href="https://www.investvanuatu.vu">https://www.investvanuatu.vu</a>) serves as the primary marketing tool, and was updated in 2020.</li> <li>The website focuses on investment promotion but includes information on foreign investment registration, and is available in three languages (English, French and Chinese, although all supporting materials are in English).</li> </ul>
(a)	National Investment Policy Statement; and	0.30	0.30	<ul style="list-style-type: none"> <li>An updated NIPS is available on the VFIPA website.</li> </ul>
(b)	key business start-up and operational requirements; and	0.10	0.10	<ul style="list-style-type: none"> <li>Information about key business start-up and operational requirements is available on the VFIPA website.</li> </ul>
(c)	strengths of the country as an investment destination; and	0.10	0.10	<ul style="list-style-type: none"> <li>Information on the strengths of the country as an investment destination is available on the VFIPA website.</li> </ul>
(d)	business cost data; and	0.20	0.00	<ul style="list-style-type: none"> <li>Business cost data is not available on the VFIPA website.</li> </ul>
(e)	business conditions within priority sectors and potential areas for investment; and	0.20	0.00	<ul style="list-style-type: none"> <li>Some basic information on priority sectors is available on the VFIPA website; however, it is not of sufficiently detailed. Investment opportunities are linked to priority sectors on the VFIPA website.</li> </ul>
(f)	investor testimonials; and	0.10	0.10	<ul style="list-style-type: none"> <li>Investor testimonials are available on the VFIPA website.</li> </ul>
(g)	contact details.	0.10	0.10	<ul style="list-style-type: none"> <li>Contact details are available on the VFIPA website.</li> </ul>
4.2	IPI provides facilitation services:	0.70	0.40	
(a)	protocols in place enabling prompt response to investor inquiries; and	0.20	0.20	<ul style="list-style-type: none"> <li>VFIPA has established protocols for responding to investor inquiries and aims to respond within a 24-hour period.</li> <li>A basic investor tracking system was established in 2010 (Excel spreadsheet). The tracking system is intended to record names and contact details of investors contacting VFIPA, sectors/activities/projects they have expressed an interest in, assessment of the proposed project's priority to the country, and results from ongoing interactions. While the system appears to remain in use, the amount of detail in the information being captured has decreased.</li> </ul>
(b)	account managers facilitate investments in priority sectors; and	0.20	0.00	<ul style="list-style-type: none"> <li>VFIPA does not allocate account managers to facilitate investments in priority sectors.</li> </ul>
(c)	proactive support provided to investments in priority sectors.	0.20	0.20	<ul style="list-style-type: none"> <li>VFIPA support tends to be reactive, and it is not actively involved in assisting foreign investors to comply with other approval processes.</li> </ul>

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#	Scoring Criteria	Max	Score	Assessment
4.3	IPI regularly undertakes advocacy across government to improve the investment climate.	0.3	0.00	<ul style="list-style-type: none"> <li>VFIPA does not regularly undertake advocacy across government to improve the investment climate.</li> </ul>
<b>5. Streamlined online approvals</b>				
5.1	Investors have the ability to complete investment approvals through electronic systems for:	1.00	0.60	<ul style="list-style-type: none"> <li>Foreign investment certification is the responsibility of VFIPA and cannot be completed online.</li> <li>Company registration is the responsibility of the Vanuatu Financial Services Commission and can be completed online.</li> <li>Business names registration is the responsibility of the Vanuatu Financial Services Commission and can be completed online.</li> <li>Tax registration is the responsibility of the Vanuatu Customs and Revenue Department and cannot be completed online.</li> <li>Business licence issuance is the responsibility of the Vanuatu Customs and Revenue Department, provincial governments, and the Minister for Finance. Business licences cannot be completed online.</li> </ul>
(a)	foreign investment certification; and	0.20	0.00	
(b)	company registration; and	0.20	0.20	
(c)	business names registration (if applicable); and	0.20	0.20	
(d)	tax registration; and	0.20	0.00	
(e)	business licences.	0.20	0.20	
<b>OVERALL SCORE</b>		<b>10.30</b>	<b>3.50</b>	<b>WEAK</b>

## 6. Reserved and Restricted Activities

### Foreign Investment Act 2019, Schedule 1, Part 2

#### RESERVED LIST

No.	Activity
1	Export of sandalwood in stick and chips form harvested from natural forest.
2	Local trading of sandalwood harvested from natural forest.
3	Export of seeds and other minor forest products harvested from natural forest.
4	Second-hand clothing shops.
5	Export of kava in root, chips, and stick form.
6	Manufacture of handicraft and artefacts.
7	Kava bar.
8	Open air vendors, door-to-door sales, and mobile shops.
9	Road transport operators: the provision of any taxi or bus service, including airport road transfers and any other road transport service involving the guest of a hotel or other accommodation business.
10	Private security services, including security guards.
11	Electricians and electro-technicians.
12	Commercial fishing within Vanuatu's inshore waters as defined by the Maritime Zones Act [Cap. 138] (i.e., archipelagic waters including first six nautical miles from land).
13	Commercial culture feasts.
14	Residential building and construction.
15	Small scale production of sawn timber from natural forest using a portable sawmill (i.e., can be physically moved from one location to another in the forest).

### Foreign Investment Act 2019, Schedule 1, Part 2

#### RESTRICTED LIST

No.	Activity	Threshold Level
1	Tour agent (business that sells tourism services) if the annual turnover is less than VT 20 million.	Annual sales turnover of VT 20 million.
2	Tour operator (business that packages two or more travel services into a single product for the consumer, i.e., transport, accommodation, meals, entertainment, sightseeing) if the investment is less than VT 50 million.	Investment of VT 20 million.
3	Guesthouse (business that provides simple accommodation using private or semi-private rooms and offers limited guest services).	50 beds or 10 rooms or annual sales turnover of VT 20 million.
4	Bungalows (business that provides island-style accommodation in detached or semi-detached dwellings).	Annual sales turnover of VT 30 million.

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No.	Activity	Threshold Level
5	Hotels and motels (business that provides accommodation using private rooms and offers amenities such as food, alcohol, and other guest services).	Investment of VT 10 million or annual sales turnover of VT 20 million.
6	Retail shops including general merchandise trading shops (excluding speciality shops).	Annual sales turnover of VT 30 million.
7	Coastal shipping (excluding vessels that exclusively provide transport to foreign tourists).	Vessel size with carrying capacity of 80 tonnes
8	<p>Any of the following professional or business services:</p> <ul style="list-style-type: none"> <li>- Real estate agent.</li> <li>- Property manager.</li> <li>- Land and property developer.</li> <li>- Legal practitioner.</li> <li>- Accounting practitioner.</li> <li>- Engineering practitioner and services.</li> <li>- Architectural practitioner and services.</li> <li>- Surveyor and draftsman.</li> <li>- Core drilling, assaying geological and prospecting support services.</li> <li>- Business and financial services and consultants.</li> <li>- Bookkeeping services.</li> <li>- Management services and consultants.</li> <li>- Advertising and marketing services and consultants.</li> <li>- Photocopying and duplicating services.</li> <li>- Typing and secretarial services.</li> <li>- Language translation and interpreting services.</li> <li>- Business security and protective services.</li> <li>- Debt collection and credit rating services.</li> <li>- Other business and administrative services and agencies.</li> </ul>	Annual sales turnover of VT 5 million.