

# Tonga

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RISK & COMPLIANCE REPORT

DATE: March 2018

<b>Executive Summary</b>	
<b>Sanctions:</b>	None
<b>FAFT list of AML Deficient Countries</b>	No
<b>Higher Risk Areas:</b>	Compliance with FATF 40 + 9 Recommendations Not on EU White list equivalent jurisdictions
<b>Medium Risk Areas:</b>	Weakness in Government Legislation to combat Money Laundering Corruption Index (Transparency International & W.G.I.) World Governance Indicators (Average Score) Failed States Index (Political Issues)(Average Score)
<p><b>Major Investment Areas:</b></p> <p><b>Agriculture - products:</b> squash, coconuts, copra, bananas, vanilla beans, cocoa, coffee, ginger, black pepper; fish</p> <p><b>Industries:</b> tourism, construction, fishing</p> <p><b>Exports - commodities:</b> squash, fish, vanilla beans, root crops</p> <p><b>Exports - partners:</b> South Korea 17.8%, US 16.4%, NZ 15.1%, Fiji 10.9%, Japan 9.2%, Samoa 9.1%, American Samoa 5.8%, Australia 5% (2012)</p> <p><b>Imports - commodities:</b> foodstuffs, machinery and transport equipment, fuels, chemicals</p> <p><b>Imports - partners:</b> Fiji 38%, NZ 23.5%, US 10.1%, China 9.9% (2012)</p>	
<b>Investment Restrictions:</b>	

The Government of Tonga welcomes business and investors, and the country's economy relies heavily on overseas remittances.

Both foreigners and domestic investors have equal rights for incorporating and establishing entities. Foreign investment legislation contains a list of 13 business activities reserved solely for Tongans and a separate list of business activities open to foreign investors under restricted conditions. Activities not identified on either list are open without restriction to foreign investors. Foreign investment in the restricted business areas may be permitted provided that investors satisfy the conditions prescribed in the regulations. The Business License Act also prohibits activities such as the storage, disposal or transport of nuclear or toxic waste, pornography, prostitution, processing or export of endangered species, production of weapons of warfare.

Tonga's Business Licenses Act's separate list of activities reserved for Tongans includes: taxis, passenger vehicles for hire, used motor vehicle dealers, retailing activities which consist of the distribution of grocery products (food & household provisions) for final consumption, wholesaling activities, the baking of white loaf bread, the raising of chickens for the production of eggs, security related business, export of green and mature coconuts, wiring and installation of residential and commercial buildings with capital investment of less than \$500,000, production and farming of root crops (yams, taro, sweet potato, cassava), squash, paper mulberry, pandanus, and kava, fishing activities comprising: reef fishing; inshore fishing within 12 nm (Zone C) in water less than 1000 meters; bottom fishing in water depth less than 500m, and Tongan cultural activities, including: folktales, folk poetry, and folk riddles; folk songs and instrumental folk music; folk dances, and folk plays; production of folk arts in particular, drawings, paintings, carvings, sculptures, woodwork, jewelry, handicrafts, costumes, and indigenous textile.

Restricted List – Open to foreign investors upon satisfaction of required conditions:

No.	Business activity	Condition
1.	Commercial fishing comprising:	Subject to their respective Resource Management Plan  (administered by the Ministry of Fisheries)
	Tuna fishing	
	Bottom fishing in water deeper than 500m	
	Other deep water fishing not less than 100m	
	Aquaculture	
2.	Agricultural supply store distributing seeds, fertilizers, chemicals	Subject to the requirements of the Pesticide Act 2002
3.	Education facility	Subject to requirements of the Education Act (Cap.86)
4.	Medical or Health activity	Subject to the requirements of the Public Health Act 1992; Therapeutic Goods Act 2001; Nursing Act 2001; Medical and Dental Practices Act

		2001; Pharmacy Act 2001; Health Practitioners Review Act 2001.
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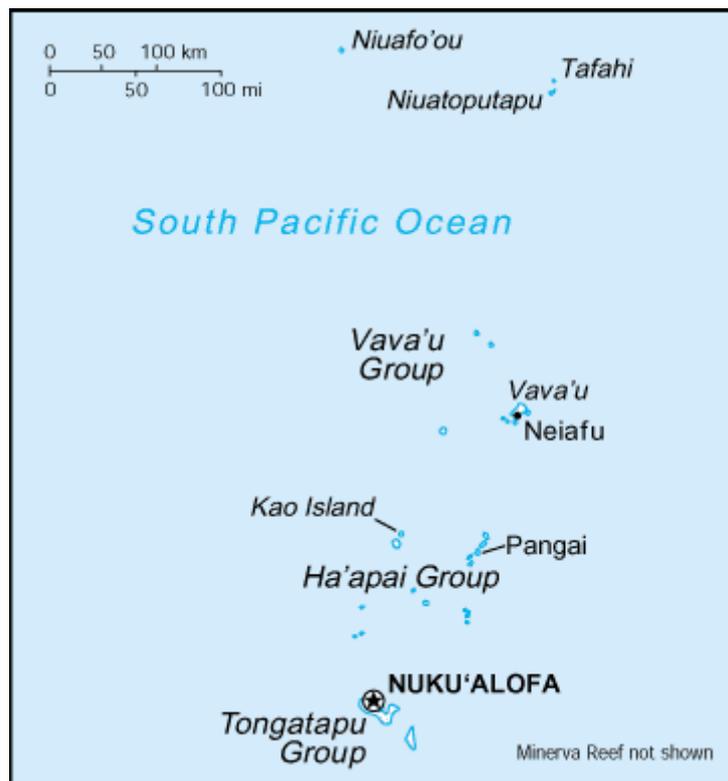
Land cannot be bought or sold in Tonga, but may be leased through formal lease arrangements.

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## Section 1 - Background

Tonga - unique among Pacific nations - never completely lost its indigenous governance. The archipelagos of "The Friendly Islands" were united into a Polynesian kingdom in 1845. Tonga became a constitutional monarchy in 1875 and a British protectorate in 1900; it withdrew from the protectorate and joined the Commonwealth of Nations in 1970. Tonga remains the only monarchy in the Pacific.



## Section 2 - Anti – Money Laundering / Terrorist Financing

### FATF status

Tonga is not on the FATF List of Countries that have been identified as having strategic AML deficiencies

### Compliance with FATF Recommendations

The last Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards in Tonga was undertaken by the Financial Action Task Force (FATF) in 2010. According to that Evaluation, Tonga was deemed Compliant for 0 and Largely Compliant for 4 of the FATF 40 + 9 Recommendations. It was Partially Compliant or Non-Compliant for all 6 of the Core Recommendations.

### Key Findings from latest Mutual Evaluation Report (2010):

Tonga has demonstrated political commitment to anti-money laundering (AML) efforts since the 2000, when it passed the Money Laundering and Proceeds of Crime (MLPC) Act. The MLPC Act criminalises ML; provides for the forfeiture and confiscation of the proceeds of crime; provides for customer identification, record keeping and suspicious transaction reporting; and establishes a Financial Intelligence Unit (FIU) and a process for receiving and disseminating suspicious transactions reports. Tonga has already identified many of the deficiencies in its AML/CFT system and has drafted but not enacted amendments to the MLPC Act, MLPC Regulations, and a new Transnational Crimes Act which would address many of those deficiencies to a significant extent.

While a formal ML/TF risk assessment has not been conducted, Tonga is not a major money laundering (ML) or terrorist financing (TF) centre. Tonga does not have a major crime problem although there has been an increase in the number of property related offences. There have been a number of reported and prosecuted cases of both private and public sector fraud, and low-level corruption which have all involved proceeds of crime.

The ML offences are largely in line with international requirements but penalties available for natural persons are not sufficiently proportionate or dissuasive and there is a lack of focus on ML investigations. Penalties for both natural and legal persons are inadequate and should be substantially increased. Many but not all of the 20 designated categories of predicate offences are currently caught by the MLPC Act. The MLPC Act has never been utilised as a basis of any criminal prosecution or criminal charges. Opportunities for ML and proceeds of crime investigations have been limited however there have been several opportunities that were not pursued.

While the TF threat is low, there are significant shortcomings both in relation to the criminalisation of TF and the freezing of terrorist assets.

There is a lack of resources and expertise in most of the relevant agencies which may be contributing to a lack of detection of ML and proceeds of crime action. Investigators may not have the capacity or skills to investigate suspicious transactions. Furthermore, ML activities may be carried out outside of the banking system, for example using alternate remittance systems.

The Transaction Reporting Authority (TRA) is generally vested with the powers of an FIU although there are some serious limitations in its powers. The TRA's functions under the MLPC Act do not explicitly include analysis of STRs and lack of timely access to financial, administrative and law enforcement information severely limits the TRA's ability to effectively analyse of STRs. Further training and resources are required.

Tonga has introduced a basic level of customer due diligence (CDD) requirements, but resource constraints mean these requirements apply only to the four licensed banks and four authorised restricted foreign exchange dealers supervised by the National Reserve Bank of Tonga (NRBT). Other financial institutions and cash dealers have not been made aware of the requirements, nor has the compliance of those other FIs or cash dealers been assessed or enforced by any competent authority. The informal remittance sector is potentially very large and may pose a particular risk. Apart from scope issues, the existing CDD requirements do not fully meet the requirements of the FATF Recommendations.

AML/CFT measures have not been extended to the DNFBP sector, though the current definition of "cash dealer" in the MLPC Act captures some DNFBPs and draft amendments to the MLPC Act would, if enacted, extend these measures to the entire DNFBP sector.

ML is not an extraditable offence under the Extradition Act, and there are doubts as to whether ML is a 'serious offence' as required under the Mutual Assistance in Criminal Matters Act. These deficiencies will be rectified if and when the penalty for ML is increased, as is the current intention.

Key recommendations made to Tonga include: increase the penalties for ML; address deficiencies in the criminalisation of TF and freezing of terrorist assets; increase the resources and level of expertise of the key agencies in the AML/CFT system (FIU, police, supervisors); focus more on possible cases of ML/proceeds of crime investigations; extend AML obligations to all financial institutions and cash dealers; strengthen legal and administrative penalties and sanctions available and applied to persons and entities fail to comply with AML/CFT obligations; and strengthen information sharing amongst relevant authorities both domestically and internationally.

#### **US Department of State Money Laundering assessment (INCSR)**

Tonga was deemed a 'Monitored' Jurisdiction by the US Department of State 2016 International Narcotics Control Strategy Report (INCSR).

Key Findings from the report are as follows: -

**Perceived Risks:**

Tonga is an archipelago located in the South Pacific. With only five commercial banks, Tonga is neither a financial center nor an offshore jurisdiction. Remittances from Tongans living and working abroad have remained high, despite a slight decline in recent months, and remain the largest source of hard currency earnings, followed by tourism.

Historically, Tonga has not been a major narcotics transit point. There are, however, unconfirmed allegations that Tongan citizens may have links to transnational drug cartels, but the scale of this is unknown. Local police authorities deem Tonga to be vulnerable to smuggling and money laundering due to inadequate and under-resourced border controls.

DO FINANCIAL INSTITUTIONS ENGAGE IN CURRENCY TRANSACTIONS RELATED TO INTERNATIONAL NARCOTICS TRAFFICKING THAT INCLUDE SIGNIFICANT AMOUNTS OF US CURRENCY; CURRENCY DERIVED FROM ILLEGAL SALES IN THE U.S.; OR ILLEGAL DRUG SALES THAT OTHERWISE SIGNIFICANTLY AFFECT THE U.S.: NO

**CRIMINALIZATION OF MONEY LAUNDERING:**

“All serious crimes” approach or “list” approach to predicate crimes: All serious crimes  
Are legal persons covered: criminally: YES civilly: YES

**KNOW-YOUR-CUSTOMER (KYC) RULES:**

Enhanced due diligence procedures for PEPs: Foreign: YES Domestic: YES  
KYC covered entities: Banks, Tonga Development Bank, foreign exchange dealers, money lenders, money transmission services, credit unions, insurance companies and intermediaries, dealers in precious metals, accountants, lawyers, real estate agents, securities dealers, casinos, sellers of payment instruments, Retirement Fund Board, and trustees

**REPORTING REQUIREMENTS:**

Number of STRs received and time frame: 15: January 1 - November 1, 2015  
Number of CTRs received and time frame: 2,904: January 1 - November 1, 2015  
STR covered entities: Banks, Tonga Development Bank, foreign exchange dealers, money lenders, money transmission services, credit unions, insurance companies and intermediaries, dealers in precious metals, accountants, lawyers, real estate agents, securities dealers, casinos, sellers of payment instruments, Retirement Fund Board, and trustees

**MONEY LAUNDERING CRIMINAL PROSECUTIONS/CONVICTIONS:**

Prosecutions: Not available  
Convictions: 0 in 2015

**RECORDS EXCHANGE MECHANISM:**

With U.S.: MLAT: NO Other mechanism: YES  
With other governments/jurisdictions: YES

Tonga is a member of the Asia/Pacific Group on Money Laundering (APG), a FATF-style regional body.

**ENFORCEMENT AND IMPLEMENTATION ISSUES AND COMMENTS:**

The National Reserve Bank of Tonga (NRBT) empowers the Transaction Reporting Authority (TRA) with the authorities of a financial intelligence unit. The TRA also serves in an AML/CFT supervisory capacity. Although many types of entities are covered under the Money Laundering and Proceeds of Crime Act (MLPCA), KYC procedures and suspicious transaction reporting (STR) requirements are only applied to banks and foreign exchange dealers actively supervised by the NRBT or the TRA. In 2015, two STRs were forwarded to the police for further investigation and five were forwarded to the Minister of Revenue and Customs for possible tax evasion.

The MLPCA and Counter Terrorism and Transnational Organized Crime Act 2013 provide for international cooperation and coordination. International cooperation and coordination is also provided for under Tonga's Mutual Assistance in Criminal Matters (MACM) Act and Extradition Act. It is unclear whether ML offenses are covered by definition under the MACM Act.

The TRA together with the Office of the Attorney General coordinated a national risk assessment with technical assistance from the government of New Zealand. This project is ongoing. On October 3, 2014, Tonga became a party to the UN Convention against Transnational Organized Crime.

The primary limitation to detecting money laundering in Tonga is the lack of resources, including technical and experienced staff at key AML/CFT agencies, including the TRA and the Tonga Police Transnational Crimes Unit. The lack of resources results in a lack of monitoring and in-depth investigation of suspicious transactions and an absence of prosecutions. A related issue is that the investigators may not be aware of new money laundering methodologies.

The Government of Tonga should work to ensure the KYC and STR requirements are applied more broadly and that politically exposed persons (PEPs) are covered under the relevant laws or regulations instead of only under guidelines applicable to NRBT-supervised institutions. Tonga should become a party to the United Nations Convention against Corruption.

#### **Current Weaknesses in Government Legislation (2013 INCRS Comparative Tables):**

According to the US State Department, Tonga does not conform with regard to the following government legislation: -

**Arrangements for Asset Sharing** - By law, regulation or bilateral agreement, the jurisdiction permits sharing of seized assets with third party jurisdictions that assisted in the conduct of the underlying investigation.

**States Party to United Nations Transnational Organised Crime Convention** - States party to the United Nations Convention against Transnational Organized Crime (UNTOC), or a territorial entity to which the application of the Convention has been extended by a party to the Convention.

**States Party to United Nations Convention Against Corruption** - States party to the United Nations Convention against Corruption (UNCAC), or a territorial entity to which the application of the Convention has been extended by a party to the Convention.

#### **EU White list of Equivalent Jurisdictions**

Tonga is not currently on the EU White list of Equivalent Jurisdictions

#### **World Governance indicators**

[To view historic Governance Indicators Ctrl + Click here and then select country](#)

#### **Failed States Index**

[To view Failed States Index Ctrl + Click here](#)

#### **Offshore Financial Centre**

Tonga is not considered to be an Offshore Financial Centre

### US State Dept Trafficking in Persons Report 2016 (introduction):

Tonga is classified a Tier 2 (watch list) country - a country whose government does not fully comply with the Trafficking Victims Protection Act's minimum standards, but is making significant efforts to bring themselves into compliance with those standards.

Tonga is a destination country for women subjected to sex trafficking and, to a lesser extent, a source country for women and children subjected to domestic sex trafficking and forced labor. East Asian women, especially those from China, are exploited in prostitution in clandestine establishments operating as legitimate businesses; some East Asian women are recruited from their home countries for legitimate work in Tonga, paying large sums of money in recruitment fees, and upon arrival are forced into prostitution. Some Tongan women and children are reportedly subjected to involuntary domestic servitude. There are reports of foreign men who attempted to transit Tonga in situations of potential debt bondage.

The Government of Tonga does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Despite these measures, the government did not demonstrate overall increasing anti-trafficking efforts compared to the previous reporting period; therefore, Tonga is placed on Tier 2 Watch List. During the reporting period, the police force began to include anti-trafficking as part of its training of new recruits. In addition, it provided 50,000 pa'anga (\$23,507) to an NGO that assists women and child victims of crime, including potential trafficking victims. While the government began investigating one potential trafficking case, it remained without formal procedures for the identification of trafficking victims. The government did not make progress in establishing a national coordinating body on human trafficking or in developing anti-trafficking awareness campaigns.

## International Sanctions

None Applicable

## Bribery & Corruption

Index	Rating (100-Good / 0-Bad)
Transparency International Corruption Index	N/A
World Governance Indicator – Control of Corruption	39

## Corruption and Government Transparency - Report by US State Department

Tonga ranked 95 out of 183 countries with an index of 3.1 out of 10 in the 2011 Transparency International Corruption index. The law provides criminal penalties for official corruption, however the government did not implement the law effectively and officials sometimes engaged in corrupt practices with impunity.

The Office of the Auditor General reported a case of official corruption relating to a diplomatic passport issued to a Chinese national. The Office of the Anti-Corruption Commissioner is charged with investigating official corruption; however the office was not sufficiently resourced.

There are no international non-governmental "watchdog" organizations represented locally.

### Section 3 - Economy

Tonga has a small, open, island economy and is the last constitutional monarchy among the Pacific Island countries. It has a narrow export base in agricultural goods. Squash, vanilla beans, and yams are the main crops. Agricultural exports, including fish, make up two-thirds of total exports. Tourism is the second-largest source of hard currency earnings following remittances. Tonga had 45,000 visitors in 2013. The country must import a high proportion of its food, mainly from New Zealand.

The country remains dependent on external aid and remittances from overseas Tongans to offset its trade deficit. The government is emphasizing the development of the private sector, encouraging investment, and is committing increased funds for healthcare and education. Tonga's English-speaking and educated workforce offer a viable labour market, and the tropical climate provides fertile soil. Renewable energy and deep sea mining also offer opportunities for investment.

Tonga has a reasonably sound basic infrastructure and well developed social services. The government faces high unemployment among the young, moderate inflation, pressures for democratic reform, and rising civil service expenditures.

#### **Agriculture - products:**

squash, coconuts, copra, bananas, vanilla beans, cocoa, coffee, sweet potatoes, cassava, taro and kava

#### **Industries:**

tourism, construction, fishing

#### **Exports - commodities:**

squash, fish, vanilla beans, root crops

#### **Exports - partners:**

Japan 16%, US 15.4%, Fiji 12.8%, NZ 12.5%, South Korea 11%, Samoa 10.7%, Australia 7.5%, American Samoa 6.8% (2015)

#### **Imports - commodities:**

foodstuffs, machinery and transport equipment, fuels, chemicals

#### **Imports - partners:**

Fiji 37.7%, NZ 21.2%, China 14.2%, US 6.4%, Australia 4.5% (2015)

### Banking

The financial system in Tonga consists of three private commercial banks, a Government owned development bank, the central bank, insurance companies and insurance intermediaries, money transfer companies, money changers, credit unions, cooperatives and many small credit companies.

There are no securities or offshore sectors in Tonga. There are four banks offering commercial services (one Australian bank, two locally incorporated foreign banks and one Government

owned bank) all of which are regulated by the National Reserve Bank of Tonga (NRBT) pursuant to the Financial Institutions Act 2004.

There are four money transfer companies licensed as foreign exchange dealers who carry on money remittance business. These companies are licensed by the NRBT pursuant to the Foreign Exchange Control Act. Though there is significant anecdotal evidence that there are unlicensed institutions carrying on the business of money transfer and money changing, the NRBT lacks the resources to locate these suspected institutions and to require them to be licensed under the Foreign Exchange Control Act or to require them to cease carrying on such businesses.

There are 45 credit unions and about 250 cooperative societies which are regulated for general purposes by the Registrar of Cooperative Societies and Credit Unions pursuant to the Credit Unions Act and the Cooperative Societies Act respectively. The credit unions are mostly in the villages and have been formed to provide small loans for their members. The cooperatives facilitate the setting up of small businesses. Both of these institutions have to file returns and are subject to on-site inspections and audits of their accounts by the Registrar, which is part of the Ministry of Labour, Commerce and Industries. At present, however, there is no supervision of these entities for AML purposes.

### Executive Summary

The last constitutional monarchy among the Pacific Island countries, Tonga held peaceful parliamentary elections in 2010. The elections were observed by officials from the Australian and New Zealand governments, and were deemed to be free and fair. The 2010 elections for the first time allowed a majority of the parliamentary seats to be elected by the public. A secret ballot produced a noble representative, Lord Siale'ataongo Tu'ivakano, as Tonga's 15th prime minister. He is the first Tongan to become prime minister as a result of being elected by the parliament and not appointed by the monarch. Tonga is a coalition partner in Afghanistan.

The country has an estimated GDP of US\$471.6 million (TOP\$877 million) and with a population of about 104,900 (2012), it is classified as an upper middle income economy by the World Bank. The country's economy relies heavily on overseas remittances. The National Reserve Bank of Tonga reported that the average monthly remittances for the 2013 fiscal year totaled US\$9.45 million (TOP\$17.3 million). Australia accounted for the largest share of remittances at 37 percent, followed by New Zealand at 26 percent. The major export markets are Hong Kong, New Zealand, and the United States, while major import markets are New Zealand, Singapore, the United States, and Australia.

#### 1. Openness To, and Restrictions Upon, Foreign Investment

The Government of Tonga welcomes business and investors, and the country's economy relies heavily on overseas remittances. Many Tongans have lived in or visited the United States, and American products are readily recognized. Tonga's fertile soil, English-speaking, educated workforce, and tropical island climate offer advantages to focused investors, though the country's distance from major markets affect the cost of imports and exports. The main productive sectors of the economy are agriculture and tourism. 2013 brought upgrades to the airport and improvements in the energy sector. Tonga became the 151st member of the WTO in June 2007 and underwent a Trade Policy Review by the WTO in 2014.

Reconstruction of the Nuku'alofa Central Business District, damaged by riots in 2006, is completed. In 2012 the government opened the newly reconstructed Vuna wharf accommodating increased number of cruise ship visits to Tonga since its opening. The government also negotiated a number of grant-funded projects with multilateral and development partners to improve infrastructure and sustainable livelihoods.

According to the Asia Development Bank (ADB), the international community responded well to damage caused by Tropical Cyclone Ian after it hit the northern Tonga island group of Ha'apai in January 2014. ADB expects that response to drive additional economic activity through development partner-financed reconstruction and increased remittances in response to lost livelihoods.

Most of the medium-large businesses have internet access. According to the International Telecommunications Union, roughly 35 percent of residents used the internet in 2012. 2013 saw the completion of a new underwater fiber optic cable connecting Tonga to the Southern Cross Cable, the main trans-Pacific link between Australia and the United States. The establishment and operation of the 827 km submarine cable system, which runs from

Tonga to the Republic of Fiji, provides Tonga's population of 100,000 with affordable, accessible, information and communication technology services. In addition to boosting Tonga's international connectivity, the project is expected to bring significant economic and social benefits to the people of Tonga in the coming years.

The Ministry of Commerce, Tourism and Labor (MCTL) administers Tonga's foreign investment policy and regulations. Businesses with any foreign ownership must obtain and hold valid foreign investment registration certificates. The application fee is about US\$68 (TOP\$115) and can be obtained by applying to the Secretary of the MCTL. Certificates are valid until the business terminates activity. If a business does not commence activity within a year after a certificate is issued, the certificate becomes invalid.

After obtaining a foreign investment certificate, an investor must apply for a business license. The application, which must be accompanied by a valid foreign investment registration certificate, can be made to the Business Licensing Officer at the MCTL.

The MCTL also processes company registrations. A foreign company that wishes to do business in Tonga must apply for incorporation under the Companies Act of 1995. The applicant must first reserve the company name at a cost of about US\$47 (TOP\$80). The fee to register is about US\$235 (TOP\$400). For a company to qualify as a "Tongan company," the majority of share-holders must be Tongan. Partnerships and sole proprietors need not register but must have a valid business license.

**Table 1:** The following chart summarizes several well-regarded indices and rankings.

Measure	Year	Rank or value	Website Address
TI Corruption Perceptions index	2011	95 of 182	<a href="http://cpi.transparency.org/cpi2013/results/">http://cpi.transparency.org/cpi2013/results/</a>
Heritage Foundation's Economic Freedom index	2014	104 of 178	<a href="http://www.heritage.org/index/ranking">http://www.heritage.org/index/ranking</a>
World Bank's Doing Business Report "Ease of Doing Business"	2014	57 of 189	<a href="http://doingbusiness.org/rankings">http://doingbusiness.org/rankings</a>
World Bank GNI per capita	2012	4,220	<a href="http://data.worldbank.org/indicator/NY.GNP.PCAP.CD">http://data.worldbank.org/indicator/NY.GNP.PCAP.CD</a>

## 2. Conversion and Transfer Policies

The National Reserve Bank of Tonga (NRBT) exercises control on foreign receipts and payments. Repatriation of funds, including dividends, profits, capital gains, interest on capital

and loan repayment and salaries, is permitted, with the following exceptions: when an industrial enterprise is partly financed by locally raised capital (including working capital), in which case the repatriation of funds will be related to the extent of foreign financing (that is, repatriation will be regulated on a pro-rata basis); in respect of capital gains, the amount eligible for repatriation will be restricted to the amount transferred inward through the banking system or by other approved methods; and expatriate employees will be allowed to remit overseas wages and salaries received in Tonga up to the amount on which income tax has been paid.

Banks and financial institutions are permitted to remit US\$5882 (TOP\$10,000) per person per year. All transfers above this amount require NRBT approval.

### **3. Expropriation and Compensation**

Expropriation has not been an issue in Tonga

### **4. Dispute Settlement**

Tonga has a robust judicial system, often staffed at the highest level by expatriate judges. The country's legal system is generally capable of enforcing contractual rights. Tonga is developing its bankruptcy law. There have been no high-profile investment disputes over the last five years. Legislation states that the provisions of the United Kingdom's Arbitration Act of 1996 govern arbitration under Tonga's Foreign Investment Act.

The World Bank Doing Business 2014 survey, ranked Tonga 48 out of 189 economies on the efficiency of the judicial system to resolve a commercial dispute. According to the survey, Tonga required 37 procedures to enforce a contract, took 2.7 years to complete procedures at a cost of 30.5 percent of the value of the claim.

### **5. Performance Requirements and Investment Incentives**

Investment incentives include: guaranteed long-term space and land leasing in the Small Industries Center, a 12-acre industrial estate, located about one kilometer from the center of Nuku'alofa; residential and work visas for foreign investors and their families for as long as the enterprise is in operation; and priority for electricity, telephone, and water connections. Technical and promotional assistance from the MCTL is available to help prospective investors identify, evaluate and set up industries. Once a business license is obtained, the business can operate.

Although the Foreign Investment Act specifies activities reserved for local businesses and included a list of these activities, the government allows full ownership by a foreign investor in cases where manufacturing activities use imported raw materials for export, or where the investments are too large for local investors. Projects are considered on an individual basis. The government generally encourages joint ventures.

Tonga does not have subsidized research and development programs for U.S or other foreign firms in Tonga.

Tonga does not have forced localization.

### **6. Right to Private Ownership and Establishment**

Both foreigners and domestic investors have equal rights for incorporating and establishing entities. Foreign investment legislation contains a list of 13 business activities reserved solely for Tongans and a separate list of business activities open to foreign investors under restricted conditions. Activities not identified on either list are open without restriction to foreign investors. Foreign investment in the restricted business areas may be permitted provided that investors satisfy the conditions prescribed in the regulations. The Business License Act also prohibits activities such as the storage, disposal or transport of nuclear or toxic waste, pornography, prostitution, processing or export of endangered species, production of weapons of warfare.

Tonga's Business Licenses Act's includes a list of activities reserved for Tongans. These include small business activities such as taxis, passenger vehicles for hire, used motor vehicle dealers, retailing activities which consist of the distribution of grocery products (food & household provisions) for final consumption, wholesaling activities, the baking of white loaf bread, the raising of chickens for the production of eggs, security related business, export of green and mature coconuts, wiring and installation of residential and commercial buildings with capital investment of less than US\$294,117.6 (TOP\$500,000), production and farming of root crops (yams, taro, sweet potato, cassava), squash, paper mulberry, pandanus, and kava, fishing activities comprising: reef fishing; inshore fishing within 12 nm (Zone C) in water less than 1000 meters; bottom fishing in water depth less than 500 meters, and Tongan cultural activities, including: folktales, folk poetry, and folk riddles; folk songs and instrumental folk music; folk dances, and folk plays; production of folk arts in particular, drawings, paintings, carvings, sculptures, woodwork, jewelry, handicrafts, costumes, and indigenous textile.

## **7. Protection of Property Rights**

Land cannot be bought or sold in Tonga, but may be leased through formal lease arrangements. Leases are usually 50 years in duration, although the law permits terms up to 99 years. The government has designated areas for small industry development, known as Small Industry Centers, on the two island areas of Tongatapu and Vava'u.

Tonga has legislation protecting patents, utility models, designs and trademarks. Legislation includes the Industrial Property Act 1994, Copyright Act 2002, Geographical Indication Act, Integrated Circuit Act, and Unfair Competition Act, however enforcement is weak.

Counterfeit products are available on the local market. Counterfeit home entertainment items are common as there is no theater in Tonga to show legitimately distributed movies. Tonga is currently developing a Border Measure Bill.

### **Resources for Rights Holders:**

Ministry of Commerce, Tourism and Labor

- Registry and Intellectual Property Office
- Phone: +676 23688

U.S. Embassy point of contact: U.S. Embassy Suva Commercial Office

- Address: 158 Princes Road, Tamavua, P.O. Box 218, Suva, FIJI

- Telephone: (679) 331 4466
- Email Address: [suvacommercial@state.gov](mailto:suvacommercial@state.gov)

Local attorneys list: [http://suva.usembassy.gov/tonga\\_-\\_attorneys\\_.html](http://suva.usembassy.gov/tonga_-_attorneys_.html)

“For additional information about treaty obligations and points of contact at local IP offices, please see WIPO’s country profiles at <http://www.wipo.int/directory/en/>.”

## **8. Transparency of the Regulatory System**

While it remains somewhat challenging to establish a business, the government has instituted reforms to make the procedures and processes easier and quicker for investors. Tonga is placed 57 (out of 189 economies) in the “Ease of Doing Business 2014” ranking, increasing 3 places from 2013.

It is normal practice in Tonga for government agencies to conduct public consultations on draft bills or regulations for public comment. The Foreign Investment Act is currently under review.

## **9. Efficient Capital Markets and Portfolio Investment**

Foreign investors are generally able to obtain credit on the local market. There are four international commercial banks, with the recent entrant, Pacific International Commercial Bank (PICB) opening in March 2014. The PICB is a Chinese-Tongan private partnership. As of December 2013, the banks had approximately US\$269.7 million (TOP\$458.5 million) in assets and liabilities.

## **10. Competition from State-Owned Enterprises (SOEs)**

Private enterprises are allowed to compete with public enterprises under the same terms and conditions. Laws and rules do not offer preferential treatment to SOEs. SOEs are in most cases registered companies and operate under the Companies Act. SOEs are subject to the same taxes and the same value added tax rebate policies as private sector competitors. State-owned enterprises are subject to budget constraints and these are enforced.

Currently there are 15 SOEs: Tonga Communication Corporation, Ports Authority Tonga, Tonga Airports Limited, Tonga Broadcasting Commission, Tonga Development Bank, Tonga Cable Limited, Friendly Islands Shipping Agency Ltd, Tongatapu Market Limited, Tonga Water Board, Tonga Power Limited, Tonga Forest Product Limited, Tonga Export Quality Management Limited, and Tonga Asset Managers and Associates Limited. Laws do not provide for a leading role for SOEs or limit private enterprise activity in sectors in which SOEs operate. All SOEs undertake commercial activities as stipulated in the Public Enterprise Act.

SOEs have independent boards of directors and are not obligated to consult with government, though directors coordinate with appropriate cabinet agencies on major policy issues.

All SOEs are under the governance of a Board of Directors which report to the Minister for Public Enterprises. Directors are appointed by Minister for Public Enterprises, with the consent

of cabinet for a term of up to three years. Cabinet approved guidelines on the selection of directors which includes advertising vacant director positions.

Tonga has no Sovereign Wealth Fund (SWF) or Asset Management Bureau (AMB). All SOEs are required by law to submit their annual report together with their audited financial statements to the Minister for Public Enterprises. These reports are made public.

### **11. Corporate Social Responsibility**

There is a general awareness of corporate social responsibility among both producers and consumers, and foreign and local enterprises to follow generally accepted corporate social responsibility (CSR) principles such as the OECD Guidelines for Multinational Enterprises. Firms that pursue CSR are viewed favorably but consumers generally prioritize value for money ahead of CSR claims.

### **12. Political Violence**

The parliamentary government and constitutional monarchy function without signs of political violence. The elected government, in January 2011, lifted a state of emergency imposed during the 2006 riots. The risk of civil disorder is low. Reconstruction of damaged buildings in the Nuku'alofa Central Business District is now complete.

There are no significant border disputes at risk of military escalation. The November 2010 Parliamentary elections were free and peaceful.

### **13. Corruption**

The law provides criminal penalties for official corruption, however the government did not implement the law effectively and officials sometimes engaged in corrupt practices with impunity.

The Office of the Auditor General reported a case of official corruption relating to a diplomatic passport issued to a Chinese national. The Office of the Anti-Corruption Commissioner is charged with investigating official corruption; however the office was not sufficiently resourced.

There are no international non-governmental "watchdog" organizations represented locally.

### **14. Bilateral Investment Agreements**

Tonga is party to bilateral investment treaties with the United Kingdom and Fiji.

### **15. OPIC and Other Investment Insurance Programs**

Overseas Private Investment Corporation (OPIC) insurance is available to investors in Tonga, and OPIC can provide political risk insurance, finance, direct loans, and loan guarantees.

### **16. Labor**

Tonga's labor force in 2012 was estimated at 42,090 with women accounting for 42.6 percent of workers. The unemployment rate stood at 6.5 percent. This rate does not reflect the significant number of people who are underemployed.

The Ministry of Commerce, Tourism and Labor is responsible for enforcing labor laws and regulations in the wage sector of the economy. The law stipulated specific occupational health and safety standards for each sector, e.g. fisheries, agriculture, etc., and the Ministry of Health enforced these standards. There is no minimum wage law although the government set guidelines for wage levels. Wages and salaries are comparatively low and are directly negotiation between employers and workers.

There are currently no trade unions in Tonga, although there is legislation permitting unions to form. The Public Servants Association operates as a de facto trade union for civil servants.

Local skilled labor is available in sufficient quantities to undertake most types of building work, except for some specialized skills and supervisory-level manpower, which is generally recruited from abroad.

### 17. Foreign Trade Zones/Free Ports

Tonga does not operate any foreign trade zones or free port facilities.

### 18. Foreign Direct Investment (FDI) and Foreign Portfolio Investment Statistics

**Table 2: Key Macroeconomic Data, FDI in Tonga**

Economic Data	Year	Amount	
Tonga Gross Domestic Product (GDP) (Millions U.S. Dollars)	2012	471.6	<a href="http://www.worldbank.org/en/country">http://www.worldbank.org/en/country</a>

The U.S. Commerce Department's Bureau of Economic Analysis records no U.S.-sourced FDI stocks for Tonga. No recent data is available for total inward FDI. According to the World Bank, total investment (gross fixed capital formation) in 2012 amounted to 33.4 percent of GDP. Foreign businesses are largely in the retail sector, and many are owned by ethnic Chinese and Indians. The Tonga Chamber of Commerce and Industry is the country's peak private sector organization and its membership covers businesses in all sectors.

## Section 5 - Government

### Chiefs of State and Cabinet Members:

For the current list of Chief of State and Cabinet Members, please access the following - [Central Intelligence Agency online directory of Chiefs of State and Cabinet Members of Foreign Governments](#)

### Legal system:

English common law

### International organization participation:

ACP, ADB, AOSIS, C, FAO, G-77, IAEA, IBRD, ICAO, ICRM, IDA, IFAD, IFC, IFRCs, IHO, IMF, IMO, IMSO, Interpol, IOC, ITU, ITUC (NGOs), OPCW, PIF, Sparteca, SPC, UN, UNCTAD, UNESCO, UNIDO, UPU, WCO, WHO, WIPO, WMO, WTO

## Section 6 - Tax

### Exchange control

For further information - <http://www.mic.gov.to/>

### Treaty and non-treaty withholding tax rates

For further information - <http://www.mic.gov.to/>

## Methodology and Sources

### Section 1 - General Background Report and Map

(Source: [CIA World Factbook](#))

### Section 2 - Anti – Money Laundering / Terrorist Financing

	Lower Risk	Medium Risk	Higher Risk
<a href="#">FATF List of Countries identified with strategic AML deficiencies</a>	Not Listed	AML Deficient but Committed	High Risk
<a href="#">Compliance with FATF 40 + 9 recommendations</a>	>69% Compliant or Fully Compliant	35 – 69% Compliant or Fully Compliant	<35% Compliant or Fully Compliant
<a href="#">US Dept of State Money Laundering assessment (INCSR)</a>	Monitored	Concern	Primary Concern
<a href="#">INCSR - Weakness in Government Legislation</a>	<2	2-4	5-20
<a href="#">US Sec of State supporter of / Safe Haven for International Terrorism</a>	No	Safe Haven for Terrorism	State Supporter of Terrorism
<a href="#">EU White list equivalent jurisdictions</a>	Yes		No
<a href="#">International Sanctions UN Sanctions / US Sanctions / EU Sanctions</a>	None	Arab League / Other	UN , EU or US
<a href="#">Corruption Index (Transparency International) Control of corruption (WGI) Global Advice Network</a>	>69%	35 – 69%	<35%
<a href="#">World government Indicators (Average)</a>	>69%	35 – 69%	<35%
<a href="#">Failed States Index (Average)</a>	>69%	35 – 69%	<35%
<a href="#">Offshore Finance Centre</a>	No		Yes

### **Section 3 - Economy**

General Information on the current economic climate in the country and information on imports, exports, main industries and trading partners.

(Source: [CIA World Factbook](#))

### **Section 4 - Foreign Investment**

Information on the openness of foreign investment into the country and the foreign investment markets.

(Source: [US State Department](#))

### **Section 5 - Government**

Names of Government Ministers and general information on political matters.

(Source: [CIA World Factbook](#) / <https://www.cia.gov/library/publications/world-leaders-1/index.html>)

### **Section 6 - Tax**

Information on Tax Information Exchange Agreements entered into, Double Tax Agreements and Exchange Controls.

(Sources: [OECD Global Forum on Transparency and Exchange of Information for Tax Purposes](#) [PKF International](#))

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