

# Foreign Employee Employment Permit Policy

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2017

*This document illustrates the policy around the effective and efficient issuance of Foreign Employee Employment Permits in-line with Samoa's labour laws.*

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## FOREWORD

As a result of the transfer of the Foreign Employee Employment Permit (*'FEEP'*) function from the Ministry of the Prime Minister and Cabinet to the Ministry of Commerce, Industry and Labour in March 2014, the Ministry has taken the initiative to develop a FEED Policy as an implementation tool pertinent to PART 9 of the Labour and Employment Relations Act 2013.

The policy does not prohibit the employment of non-citizens in Samoa rather; it is an integral resource in a proposition to reduce its dependency on foreign workers and to ensure Samoan nationals get a fair chance at being gainfully employed. Furthermore, the policy clarifies the requirements, process and procedures around the assessment and issuance of Employment Permits for non-citizens.

The Government remains open to foreign capacity to complement our local workforce but bearing in mind our priority is providing employment opportunities for Samoan citizens and improvement of employee skills training. The Ministry takes into consideration available expertise and training needs when setting rules and standards for sectors that are over-dependent on non-citizens particularly in the following areas:

- Skill Trade particularly in the Construction Industry;
- Hospitality particularly in the Accommodation and Food and Beverage Industry;
- Retail;
- Restaurant;
- Wholesale;
- Domestic work; and
- Sewing.



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## ABBREVIATIONS

ACRONYM	
ACC	Accident Compensation Corporation
ACEO	Assistant Chief Executive Officer
Act 2013	Labour and Employment Relations Act 2013
CEO	Chief Executive Officer
FEEP	Foreign Employee Employment Permit
LMS	Labour Market Survey
MCIL	Ministry of Commerce, Industry and Labour
M&E	Monitoring and Evaluation
MPMC	Ministry of the Prime Minister and Cabinet
permit	Employment Permit
SNTF	Samoa National Tripartite Forum
Regulations 2016	Labour and Employment Relations Regulations 2016



# FOREIGN EMPLOYEE EMPLOYMENT PERMIT POLICY

## INTRODUCTION

Employment Permit (*permits*) requests submitted to the Ministry of Commerce, Industry and Labour (*MCIL*) are assessed on a case by case basis. The current process to implement PART 9 Foreign Employee Employment Permit (*FEEP*) of the Labour and Employment Relations Act 2013 (*Act*) has resulted in inconsistencies, delays and administrative errors as outlined in the Performance Audit Report on Non-Local Workers, Businesses and Investments 2015. In addition, the recording of data and information on specifics such as industries, profession and gender identification has also contributed to reporting discrepancies.

Where specific skills and experience prove difficult to source within the Samoa Labour Market, an employer may choose to recruit a non-citizen(s) with those skills and expertise. The demand for the recruitment of non-citizens is on the rise especially within industries such as skill trades; hospitality; restaurants; retail, wholesale and services. Seemingly there is an increase in demand for FEEP for domestic work particularly in babysitting, caregiving and housekeeping. Nevertheless, it is imperative that the FEEP system is operated in a manner that does not disrupt Samoa's labour market.

## BACKGROUND

The assessment and issuance of FEEPs before 20<sup>th</sup> March 2014 was administered collaboratively between the Immigration Services, under the Ministry of the Prime Minister and Cabinet (*MPMC*) and MCIL. The transfer of this function derived from the review of the Labour and Employment Relations Act 2013 which addressed key employment issues relevant to the assessment and issue of FEEPs.

The following table illustrates the number of permits issued over the past four financial years.

*Table 1*

Financial Year	Jan 2013 – Mar 2014	FY2014/2015	FY2015/2016	FY2016/2017
# of FEEPs issued	597	491	489	579

Permits are issued to non-citizens within specific industries, professions and roles perceived to be high in demand, but scarce in the local labour market.

According to the Samoa Bureau of Statistics, Population and Housing Census 2011 indicated the unemployment rate had increased from 2.1 in 1991 to 5.7 in 2011. A gradual 3.6 increase within 20 years as illustrated in table below. The Ministry foresees the unemployment rate to escalate given the popular interest of businesses and organisations to hire from abroad. The significant labour surplus is also supported by the 2012 Samoa Labour Force Survey.

**Table 2: Samoa's Unemployment Rate from 1991 – 2011**

<b>Labour force, unemployed population and unemployed rate 1991, 2001, 2006, and 2011</b>				
	<b>1991</b>	<b>2001</b>	<b>2006</b>	<b>2011</b>
<b>Economically active/labour force (L)</b>	57,142	52,945	54,625	47,881
<b>Unemployed persons (U)</b>	1,175	2,620	707	2,720
<b>Unemployment (u) : U/L</b>	2.1	4.9	1.3	5.7

*Source : Samoa Bureau of Statistics, Population and Housing Census 2011*

The question is then, why do employers prefer non-citizen expertise over local talent?

The answer can be explored in many spheres, but based on the explanations made known by employers whom apply for FEEPs, the two main reasons include; (1) commitment and integrity, and (2) know-how in technical areas.

The policy is to ensure the FEEP system is operated to maximise the benefits of non-citizen workers who can add value to industries with skill shortages, and at the same time minimise the risk of disrupting Samoa's labour market.

## OBJECTIVE

The policy under the authority of MCIL is to provide a practical and systematic approach to the sourcing of highly qualified and experienced foreigners who can add value to industries with skill shortages in Samoa.

The policy aims to address the following:

1. Improved working environment by having clear guidelines for the effective and efficient implementation of PART 9 of the Act.
2. Effective tools to ensure employers recruit highly skilled non-citizen workers to industries that contribute to the development of the economy of Samoa.

## MANDATE

The following legislative mandate outlines MCIL's responsibility and the basis for the assessment of FEEP:



- PART 9 Foreign Employees Employment Permit sections 58 to 62 of the Labour and Employment Relations Act 2013.
- PART 8 Employment of Domestic Workers sections 25 to 26 of the Labour and Employment Relations Regulations 2016
- PART IV Values, Principles and Code of Conduct sections 17 to 19 of the Public Service Act 2004.

## GUIDING PRINCIPLES

The policy assessment and decisions are to be grounded on the following key principles:

PRINCIPLE	APPLICATION
Service	MCIL will provide effective and efficient service through: <ul style="list-style-type: none"> <li>• Excellent customer service</li> <li>• Fair and accurate advice and information</li> <li>• Timely assessment</li> <li>• Collaborative approach with stakeholders</li> </ul>
Consistency	MCIL is to ensure consistency through: <ul style="list-style-type: none"> <li>• Thorough and fair assessment and evaluation of all FEEP applications</li> <li>• Providing advice in similar circumstances to achieve reliable outcomes</li> <li>• Following legislation and policies to guide fair and consistent decision making</li> </ul>
Transparency	MCIL is to ensure a clear and simple process will be maintained through: <ul style="list-style-type: none"> <li>• Advising businesses, investors, employees and consumers of what is expected of them</li> <li>• Being able to explain and justify actions and decisions made regarding permit applications, etc.</li> <li>• Open dialogue with key stakeholders</li> </ul>
Honesty	MCIL is to ensure: <ul style="list-style-type: none"> <li>• All permits are assessed with integrity</li> <li>• Information used for the assessment of FEEPs must be kept secure and confidential, and strictly used for the purposes of determining the issuance of FEEPs</li> </ul>

## APPLICATION

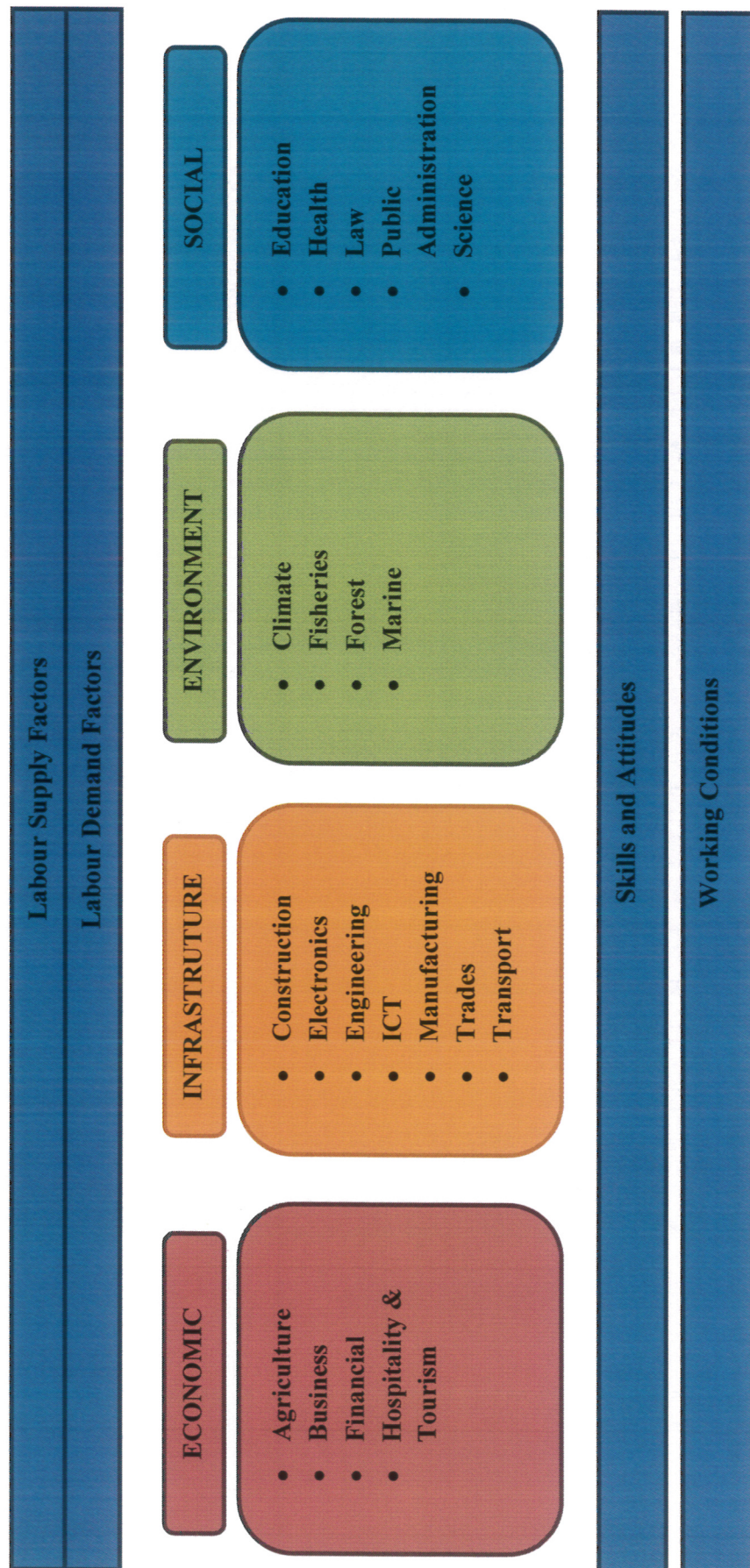
This policy applies to:

- All non-citizens who wish to take up employment or establish and operate a business in Samoa
- All employers who wish to employ non-citizens to work in Samoa; and
- All Labour Inspectors of MCIL for a better understanding of the requirements, process and the strategic drivers for assessing and issuing employment permits.



## OVERVIEW OF THE FEED POLICY

The FEED Policy is important in supporting the economy of Samoa, with significant emphasis on the development of the private sector. The assessment and issuance of employment permits is based on demand and supply of the labour market, both of which are critical elements in the FEED process.

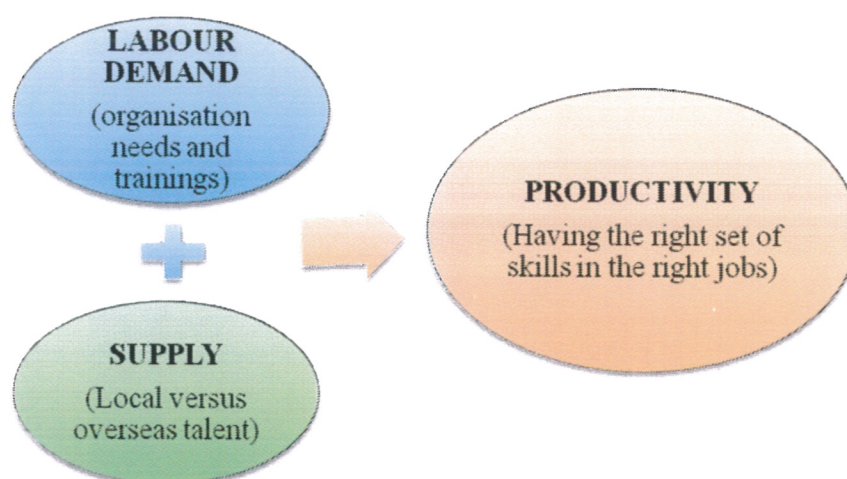


## LABOUR DEMAND AND SUPPLY

The policy not only promotes the sourcing of highly qualified and experienced non-citizens, but details how MCIL will channel its resources to ensure consistent, fair and transparent decision making.

There are many factors to be considered when determining eligibility of non-citizens to apply for permits. Understanding and accurately analysing the labour market survey in Samoa is an important part in the assessment and the issue of permits.

The Labour Market Survey ('LMS')<sup>1</sup> conducted by MCIL every two years is a critical document for understanding and analysing the skill shortage and skill demands within the formal labour workforce.



All permits will be assessed and aligned with the skills shortage and profession shortage highlighted in *General and Critical Skills List*. The list outlines priority jobs that require qualified and experienced non-citizens as the skill set, qualification and expertise, are either marginal and/or do not exist in Samoa.

Foreign nationals made up 1.5% of the total private sector workforce according to the Labour Market Survey 2013<sup>2</sup>. Based on the Survey, an average of 59% of employment permits issued between 2010 and 2013 were for positions at the senior executive/managerial and professional level, 26% were for technical positions and 15% were for services positions (which are classified as semi-skilled workers). The number of employment permits issued to non-citizen workers has decreased by 56% overall in comparison to 2010. For the year 2013 there was a 55% decrease of non-citizens in the areas of senior executives, and managerial, professionals, and technical occupations.

<sup>1</sup>Labour Market Survey 2010, 2013

<sup>2</sup>Labour Market Survey 2013



## CATEGORIES OF EMPLOYMENT

All permits will be considered under the following categories.

### General Skills

The basis of being issued a permit under this category is that an offer of employment has been made by a prospective employer, only after the employer has unsuccessfully exploited the local labour market in attempting to procure the needed skill, experience and qualification(s) equivalent to that of a potential foreigner.

For any employer submitting a FEEP application must first advertise the job on the Labour Market Information System via <http://www.mcil.gov.ws/index.php/en/publication/jobseekers> administered by MCIL, or via <http://www.snyc.org.ws>, or any other media portal in Samoa. The vacant position is to be advertised for 10 working days before submitting the application to MCIL.

General skills include the following professions:

- Non-specialised trades such as administration, retail, store supervisor or store manager and delivery manager, etc.
- Domestic work that includes nannies, housemaids and caregivers, etc.

### Critical Skills

A permit may be issued to a non-citizen who possesses critical skills, experience and qualifications in priority industries and professions. Applicants will need to demonstrate their area of expertise with supporting documentation such as professional references, certificates, certified qualifications, awards and/or publications.

Critical skills professions include the following:

- Executive positions such as General Managers and Directors of Foreign Investments.
- Qualified professionals such as ICT professionals, engineers, doctors, lawyers, teachers and financial advisors, certified accountants etc.
- Specialised tradespeople such as mechanics, technicians, plumbers, carpenters, specialised chefs and seamstresses etc.

### Intra-Company Transfer Skills

Permits issued for this category are considered for intra-company transfer arrangements where foreigners who are either deployed or seconded from a branch, or associate office of a corporate entity abroad, are required to temporarily undertake work in Samoa to either assist with the setup and/or managing of a multinational business that has been established in Samoa, such as the Bank of the South Pacific, ANZ, Sheraton Hotel, and Lamana Industry, etc.

### **Consultancy Work**

A non-citizen, who is conducting consultancy work for a period of three (3) months or more, must apply for a permit. The applicant will also need to apply for a Business License from the Ministry for Revenue.

### **Employment and/or Extensions**

Non-citizens who wish to work in Samoa for more than 3 months but less than 12 months, and/or who are required to extend their permit stay longer to complete unfinished work or project, may apply under this category.

### **Other**

#### **Dependant/Partner/Spouse**

It is illegal for a spouse(s) and/or a dependant(s) of a permit holder to work in Samoa while issued with a Dependant Visa by the Immigration Service. However, in the event the spouse and/or dependant of the principal applicant wish to work in Samoa, the applicant will need to provide justification to the Ministry of Commerce, Industry and Labour for eligibility to work in Samoa.



## INDUSTRY DEVELOPMENT

Section 60(2)(c) of the Act 2013 states that before granting a permit, the Minister must consider the development of the relevant industry, and to ensure industries with skills shortage are also taken into account.

The following classification originates from information in the Samoa Development Strategy 2016-2020, the Labour Market Survey 2013, and the Public Service Human Resource Development Strategy 2012-2013.

### General Skills Job

*Eligibility for FEEPs to these jobs will be in accordance with statutory requirements and the labour market demand and supply. The salary benchmark for General Skills is for the applicant to earn a fixed amount of \$15,000.00 and below p.a., and possess acceptable qualification (academic and professional)*

Industry	Types of Non to Semi Skilled Jobs
<ul style="list-style-type: none"> <li>Domestic</li> </ul>	<ul style="list-style-type: none"> <li>nanny</li> <li>elderly care</li> <li>housemaid</li> <li>farmers (vegetable pickers etc)</li> </ul>
<ul style="list-style-type: none"> <li>Food &amp; Beverages (Restaurant)</li> </ul>	<ul style="list-style-type: none"> <li>bartender</li> <li>fast food worker/cook *</li> <li>baker</li> <li>accounts officer in selected industries</li> </ul>
<ul style="list-style-type: none"> <li>Sewing</li> </ul>	<ul style="list-style-type: none"> <li>tailor / sewer</li> <li>sewing machine operator</li> <li>seamstress</li> <li>pattern cutter</li> <li>administrative assistant in selected industries *</li> <li>store supervisor / manager*</li> </ul>
<ul style="list-style-type: none"> <li>Retailing of General Merchandise</li> </ul>	<ul style="list-style-type: none"> <li>retail salesperson *</li> <li>administrative assistant in selected industries *</li> <li>store supervisor / manager*</li> <li>delivery person</li> <li>accounts officer in selected industries</li> </ul>
<ul style="list-style-type: none"> <li>Retailing of Motor Vehicles</li> </ul>	<ul style="list-style-type: none"> <li>administrative assistant in selected industries *</li> <li>store supervisor / manager*</li> <li>accounts officer in selected industries</li> <li>retail salesperson *</li> </ul>
<ul style="list-style-type: none"> <li>Tourism (Accommodation, Hospitality, Food &amp; Beverages)</li> </ul>	<ul style="list-style-type: none"> <li>bartender</li> <li>customer service representative in selected industries *</li> <li>housemaid</li> <li>florist</li> </ul>

<ul style="list-style-type: none"> <li>Wholesaling of General Merchandise</li> </ul>	<ul style="list-style-type: none"> <li>store supervisor / manager*</li> <li>delivery person</li> <li>accounts officer in selected industries</li> </ul>
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*\*Assessed according to Labour Demand & Supply*

### Critical Skills Job

*Eligibility for FEEPs to these jobs will be in accordance with statutory requirements and the labour market demand and supply. The salary benchmark for Critical Skills is for the applicant to earn a fixed amount of \$15,000.00 and above p.a., and possess acceptable qualification (academic and professional)*

Sector	Industry	Types of Highly Skilled Jobs
Economic	<ul style="list-style-type: none"> <li>Finance</li> </ul>	<ul style="list-style-type: none"> <li>Accountant</li> <li>Finance Controller</li> <li>Public Financial Management</li> <li>Project Management</li> </ul>
	<ul style="list-style-type: none"> <li>Business</li> </ul>	<ul style="list-style-type: none"> <li>Procurement Manager</li> <li>Project Manager</li> </ul>
	<ul style="list-style-type: none"> <li>Agriculture</li> </ul>	<ul style="list-style-type: none"> <li>Agricultural Economist</li> <li>Agriculture Engineers</li> <li>Agricultural Salesperson</li> <li>Agronomist (investigating various aspects such as fertilization, irrigation, crop management and harvesting)</li> <li>Agricultural Inspector</li> <li>Agriculture Journalist</li> <li>Agriculture Managers</li> <li>Agriculture Scientists</li> <li>Agriculture Specialists</li> <li>Specialised Farmers</li> </ul>
Social	<ul style="list-style-type: none"> <li>Education</li> </ul>	<ul style="list-style-type: none"> <li>Curriculum Developers</li> <li>Teachers (Physics, Chemistry, Biology, Computing, Mathematics, Industrial Arts, Commerce)</li> </ul>
	<ul style="list-style-type: none"> <li>Health</li> </ul>	<ul style="list-style-type: none"> <li>Anaesthetist</li> <li>Cardiologists</li> <li>Clinical Psychologist</li> <li>Communicable &amp; Non-Communicable Disease Experts</li> <li>Dentists</li> <li>Dermatology</li> <li>Dietician and Nutritionists</li> <li>General Practitioners</li> <li>Medical Laboratory</li> <li>Medical Radiologists</li> <li>Medical Surgeons</li> <li>Microbiologist</li> <li>Midwifery</li> <li>Nurse Specialists</li> <li>Ophthalmologist</li> <li>Paediatrics</li> <li>Pathologist</li> </ul>



		<ul style="list-style-type: none"> <li>▪ Pharmacists</li> <li>▪ Veterinarian</li> <li>▪ Surgeons</li> <li>▪ Social Workers</li> <li>▪ Veterinarian</li> <li>▪ Occupational Safety and Health Advisor</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Public Administration</li> </ul>	<ul style="list-style-type: none"> <li>▪ Capability Development Specialist</li> <li>▪ Human Resource Practitioners</li> <li>▪ Project Management Experts</li> <li>▪ Reform Specialists</li> <li>▪ Change Management Experts</li> <li>▪ Contract Management Experts</li> <li>▪ Organisational Psychologists</li> <li>▪ Public Management Specialists</li> <li>▪ Local Government Development Experts</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Law</li> </ul>	<ul style="list-style-type: none"> <li>▪ Investigation Experts (Drugs, Fraud, Criminology)</li> <li>▪ Solicitors (especially specialization in Administrative Law, Legislative Drafting, Contract Law, Land Law, International Law, Environmental Law, Commercial Law)</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Science</li> </ul>	<ul style="list-style-type: none"> <li>▪ Science Technicians</li> <li>▪ Science Teachers (Education)</li> </ul>
<b>Infrastructure</b>	<ul style="list-style-type: none"> <li>▪ Construction</li> </ul>	<ul style="list-style-type: none"> <li>▪ Architectural Draftspersons/CAD Operators</li> <li>▪ Building Services Engineer</li> <li>▪ Building Surveyors &amp; Inspectors</li> <li>▪ Computer (ICT)</li> <li>▪ Construction Project Managers</li> <li>▪ Geotechnical Engineers</li> <li>▪ Infrastructure Engineers &amp; Technicians</li> <li>▪ Materials Engineer</li> <li>▪ Quantity Surveyors</li> <li>▪ Wastewater Engineers</li> <li>▪ Civil Engineers &amp; Technicians</li> <li>▪ Environmental Engineers</li> <li>▪ Structural Engineers &amp; Technicians</li> <li>▪ Water Engineer &amp; Technicians</li> <li>▪ Computer Systems Engineers &amp; Technicians</li> <li>▪ Mechanic Engineers &amp; Technicians</li> <li>▪ Telecommunication Engineer</li> <li>▪ Project Managers</li> <li>▪ Scaffolding</li> <li>▪ Plasterer</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Manufacturing</li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>Assessed accordingly</i></li> </ul>
	<ul style="list-style-type: none"> <li>▪ Information Communications and Technology</li> </ul>	<ul style="list-style-type: none"> <li>▪ Architects</li> <li>▪ Building Services Engineer</li> <li>▪ Computer Engineers</li> <li>▪ Computer Programmers and Technicians</li> <li>▪ Graphic Artists</li> <li>▪ ICT Project Manager</li> </ul>

		<ul style="list-style-type: none"> <li>▪ System Analysts</li> <li>▪ Film, Video Editor</li> <li>▪ Multimedia Specialist</li> </ul>
	▪ Transport	<ul style="list-style-type: none"> <li>▪ Road Construction</li> <li>▪ Project Management</li> </ul>
	▪ Engineering	<ul style="list-style-type: none"> <li>▪ Agriculture Engineer (Agriculture)</li> <li>▪ Architectural Engineer</li> <li>▪ Biomedical Engineer (Health)</li> <li>▪ Chemical Engineer (Health)</li> <li>▪ Civil Engineering Technician</li> <li>▪ Construction</li> <li>▪ Electrical Engineer</li> <li>▪ Environmental Engineer (Environment)</li> <li>▪ Mechanical Engineer</li> <li>▪ Industrial (Construction)</li> <li>▪ Project Management</li> <li>▪ Surveyor</li> <li>▪ Project Builder</li> </ul>
	▪ Special Trades (Apprenticeship)	<ul style="list-style-type: none"> <li>▪ Automotive Electricians / General</li> <li>▪ Electric Mechanic (lines)</li> <li>▪ Electronics</li> <li>▪ Mechanics (heavy machinery)</li> <li>▪ Construction (carpenters)</li> <li>▪ Plumber</li> <li>▪ Chefs / Executive chef /pastry chef / Sous chef / saucier</li> <li>▪ Hairdresser / Barber</li> <li>▪ Beauticians</li> </ul>
<b>Environment</b>	▪ Climate	<ul style="list-style-type: none"> <li>▪ Draftsperson</li> <li>▪ Meteorologists</li> <li>▪ Policy Analysts</li> <li>▪ Research Analysts</li> </ul>
	▪ Forestry	<ul style="list-style-type: none"> <li>▪ Wildlife Management</li> <li>▪ Foresters</li> <li>▪ Park rangers</li> <li>▪ Conservation biologists</li> <li>▪ Scientists</li> <li>▪ Technicians</li> <li>▪ Conservation</li> </ul>
	▪ Marine	<ul style="list-style-type: none"> <li>▪ Marine Biologists</li> <li>▪ Fish Management</li> <li>▪ Scientists</li> <li>▪ Marine Conservation</li> <li>▪ Wildlife Veterinary</li> </ul>
	▪ Veterinary	<ul style="list-style-type: none"> <li>▪ Veterinary surgeon</li> <li>▪ Veterinarian Researcher Scientist</li> <li>▪ Veterinarian Policy Analysts</li> </ul>
	▪ Urban Planning	<ul style="list-style-type: none"> <li>▪ Surveyors</li> <li>▪ Town Planners</li> <li>▪ Valuers</li> <li>▪ Environmentalist</li> </ul>
	▪ Agriculture	<ul style="list-style-type: none"> <li>▪ Agronomist</li> <li>▪ Agriculture engineering</li> <li>▪ Soil specialist</li> </ul>



		<ul style="list-style-type: none"> <li>▪ Animal science</li> <li>▪ Food science</li> </ul>
<b>Other</b>	<ul style="list-style-type: none"> <li>• Investors</li> <li>• Intra-Company transfers</li> <li>• Consultancy</li> </ul>	

## REQUIREMENTS AND TERMS AND CONDITIONS

The Policy provides specific terms and conditions of applying, and working in Samoa under the FEEP scheme.

The Policy also attempts to:

- focus on key sectors and skills shortages, especially in industries with potential for employment growth;
- adhere to public concerns about disrupting the labour market or reducing the employment opportunities for the Samoa nationals;
- ensure that permit holders are making a positive net contribution to the Samoan economy;
- minimise the potential for abusing the employment rights of foreign nationals; and
- be administratively effective and efficient, have a clear legislative basis, and be sufficiently flexible to react quickly to changes in the labour market.

### Applying for an Employment Permit

1. Any non-citizen(s) seeking admission in Samoa for employment and domestic work purposes of more than three (3) months is required to obtain an employment permit from the Ministry of Commerce, Industry and Labour (*MCIL*).
2. The permit may be issued to a non-citizen after a determination of the non-availability of local expertise by the employer and/or by MCIL.
3. All FEEP determinations will be based on satisfying all requirements stipulated under section 60 of the Act, and the completion of the FEEP Application Form together with the submission of supporting documents outlined in the Checklist of the FEEP Application Pack.

#### **Checklist Requirements (refer section 60 (2) and (3) of the Act):**

- a. Completed and signed FEEP Application
- b. Medical clearance
- c. Police clearance
- d. Job offer letter
- e. Employment Agreement and/or Contract
- f. Certified qualification from the Samoa Qualification Authority

- g. Relevant skills and training
  - h. Relevant work experience, knowledge and references
  - i. Character references
  - j. Assessment of the availability of labour supply and demand in the relevant industry
  - k. Satisfaction of the required ratio of one (1) non-citizen worker to three (3) citizen workers
  - l. Comply with any employment requirements under the Foreign Investment Act 2000
  - m. Payment of allocated fees
  - n. Any other requirement requested by the Ministry
4. The employment permit is only valid for a maximum period of two years (refer section 60(3)(b) of the Act).
  5. Upon the expiration and/or early termination of the employment permit, the holder of the employment permit must leave Samoa. However, an extension to the permit will be considered under exceptional circumstances by MCIL. Additional cost for an extended permit will be at the expense of either the permit holder and/or the employer.

Exceptional circumstances for approval of a permit extension may include the employee remaining in their current employment position for one of the following reasons:

- Extension of project/contract of service– applications for any extension will need to be accompanied by proof that the contract has been extended and/or that another contract has begun which requires the expertise of the applicant.
- Evidence the position has been advertised within the local market with no success of finding the right skills, knowledge and attributes.
- Performing disaster recovery work following a major disaster such as clean-up, rebuilding or emergency management activities etc.

Extensions will also be considered based on priority industries such as but not limited to Tourism, Agriculture, and Infrastructure.

6. A permit is not transferrable from one job to another. An employment permit holder shall only perform the activities as per the criteria stipulated in the employment permit application that was approved by MCIL.
7. If a current employment permit holder decides to start a business in Samoa, they must either terminate his/her employment arrangement or return to his/her country of origin, before applying to start a business in Samoa.



8. A FEEP application maybe denied for the following:
  - a. misinterpretation of facts in the application;
  - b. submission of falsified and/or misleading documents;
  - c. incomplete form;
  - d. evidence of criminal record;
  - e. evidence that the applicant's health is not suitable for the type of work;
  - f. evidence that local talent are able and willing to undertake the job intended for the non-citizen;
  - g. evidence the employer and/or applicant had previously breached section 61 of the Act;
  - h. evidence that there is an existing employment grievance against the employer and/or employee;
  - i. the Ministry has evidence the applicant had worked prior to lodging a FEEP application; and
  - j. any other reason the Ministry is of the view has led to a breach of Samoa's labour laws.
9. A permit maybe revoked after due process based on the following grounds (refer section 61 of the Act):
  - a. The employment permit holder has breached conditions imposed upon him or her; or
  - b. The employment permit holder has breached a condition of his or her term of employment with an employer who is a Samoan citizen or company (this include misconduct on the part of the employee whether termination results or not is irrelevant); or
  - c. The employment permit holder provided misleading or false information for the purpose of obtaining his or her employment permit;
  - d. It is appropriate to do so in the circumstances in the public interest (example, where an employee commits an act considered a crime under the relevant Crimes Act 2013, further note the EP team does not need a conviction to revoke the work permit suffice the public interest reasoning); and
  - e. Employer terminated the employment of the non-citizen within the "fair dismissal laws applicable in Samoa. (suggest this is added to protect the rights of foreign employees)
10. It is mandatory for an application for an extension of a permit to be filed at least 30 days before the expiration date. Applications for an extension that do not satisfy this timeframe will not be considered. The Immigration Services will be advised of permits that have expired and will not be renewed.
11. It is mandatory for a non-citizen to carry at all times their permit Identification Card and is required to produce the ID card to Labour Inspectors when requested during MCIL monitoring and evaluation ('M&E'), spot checks and inspections (*refer to section on M&E and Penalties for more information*).

12. Generally, a person(s) who has been issued with a temporary resident permit to accompany someone eligible to work in Samoa cannot undertake any type of employment during the period in which the person is accompanying the principal applicant in accordance with the Immigration Act 2004. A request of this nature will be assessed on a case by case basis by MCIL.

### **Stand-down period**

Where an employer has continuously breached any provisions of the Act 2013, and/or has incurred a penalty for a breach of employment standards, there will be a stand-down period preventing them from recruiting non-citizens for up to 12 months depending on the severity of the breach.

The Ministry of Commerce, Industry and Labour will maintain a list of non-compliant employers/employees and shared with Immigration Services and the Ministry for Revenue to ensure that employers on the list are not able to recruit non-citizens.

### **Repatriation**

Repatriation of non-citizen workers is silent in the Act 2013 and Regulations 2016 (except for migrant domestic workers). To avoid problem of non-citizens being stranded in Samoa due to inability to return to their home countries, the EP team prior to issuance of the permit must clarify from the employee and employer as to who is responsible for the return of the permit holder in the event of an early termination of the employment agreement and/or upon the expiration of the employment arrangement.

Under the Regulation 2016, a domestic migrant worker is entitled to repatriation at the end of the term of employment. However, the Regulation 2016 is silent on what happens in circumstances where the Domestic employee's contract is terminated during the term of the contract period. Whilst this is left to parties to decide, the EP team must clarify from the employee and employer as to responsibility for repatriation when termination occurs.



## MONITORING AND EVALUATION

Monitoring and auditing of permits is an important function of the Ministry. Legislation requires a person who is not a citizen of Samoa to be granted a valid employment permit to be eligible to work in Samoa. It is important for MCIL to regularly conduct its M&E role to ensure employers and non-citizens residing and working in Samoa comply with FEEP requirements.

M&E is fundamental to:

- Provide information to determine demand and supply in the labour market and industry development, etc.;
- Provide accurate and real-time data and information for reporting and decision making, and inform relevant stakeholders on arising concerns;
- Self-assess the effectiveness of internal systems and processes; and
- Self-assess the status of performance indicators concerning FEEPs.

No employer can refuse an M&E visit by the Ministry (refer to powers of labour inspectors under section 17 of the Act). Non-citizens observed working in a reserved business in accordance with the Foreign Investment Act 2000, and observed to be working in any business/company or office without a valid employment permit must provide identification when requested by a Labour Inspector.

Permits should be available and produced to MCIL Inspectors on request during M&E activity, spot checks and/or routine inspections. Failure to do so will warrant necessary measures, and/or the intervention of the Immigration Services and the Ministry for Revenue.

In short, the role of monitoring is to assure compliance with relevant legislation, policies and procedures.

## PENALTIES

In accordance with section 58(2) of the Act, a person who is not a citizen of Samoa and is found to be working in Samoa without a valid employment permit commits an offence and is liable to a fine not exceeding WST\$5,000.

## EXEMPTIONS

If your stay is shorter than three months, you are allowed to perform certain types of work-related activity even if you do not have a residence and work permit.

Such activities include teaching, attending a course, participating in meetings, negotiations, briefings and training. Some examples of these activities are outlined below.

- a) Representation on an official trade mission recognised by the Government of Samoa.
- b) Employment as a sales representative of an overseas company in Samoa for a period or periods no longer than three (3) months in a calendar year.
- c) Activity in Samoa as an overseas buyer of Samoan goods or services for a period or periods no longer than three (3) months in a calendar year.
- d) Official business in the service of a government or international organisation that is entitled to privileges and immunities under the Diplomatic Privileges and Immunities Act 1978.
- e) Business consultations or negotiations in Samoa on establishing, expanding, winding up a business enterprise in Samoa or carrying on a business in Samoa for a period or periods no longer than three (3) months in a calendar year.
- f) Study or training under a scholarship or other award approved by the Minister.

***Note:** Requests for exemptions not classified under PART 1 of the Act will be considered on a case-by-case basis.*

## FEES

Fees will change from time to time upon the approval of the Minister. As of 01<sup>st</sup> July 2018 the fees will take effect.

- All FEEP applications are to include a lodgement fee of WST\$100 (non-refundable) for administrative purposes. The lodgement fee covers the costs incurred in processing an application from the time of its submission to the time the applicant is notified of the application outcome.
- A charge of \$30 for a replacement of FEEP Identification Card to cover the costs incurred to replace a lost or misplaced FEEP ID Card. This is to discourage loss of cards through personal negligence and reduce security issues.
- An urgency fee of \$250 to process FEEPs within three working days. Otherwise the normal 5 – 10 working days is expected to process a FEEP application.

The fees for the various FEEP categories are outlined below:

Category for Employment Fees	Abroad (SA\$)	In Country (SA\$)
<b>General Skills</b> <i>Include:</i> <ul style="list-style-type: none"> <li>• <i>Non-specialised trades such as administration, retail, hotel manager, cooks, store supervisor or delivery manager, etc.</i></li> <li>• <i>Domestic work that includes nannies, housemaids and caregivers, etc.</i></li> </ul>	\$800.00	\$1400.00
<b>Critical Skills</b> <i>Include:</i> <ul style="list-style-type: none"> <li>• <i>Executive positions such as General Managers and Directors of Foreign Investments.</i></li> <li>• <i>Qualified professionals such as ICT professionals, engineers, doctors, teachers and financial advisors, etc.</i></li> <li>• <i>Specialised tradespeople such as mechanics, carpenters and hairdressers, etc.</i></li> </ul>	\$600.00	\$1200.00
<b>Intra-Company Transfer</b> <i>Include:</i> <ul style="list-style-type: none"> <li>• <i>Intra-company transfer arrangements where foreigners are either deployed or seconded from a branch, or associate office of a corporate entity abroad, are required to temporarily work in Samoa to either assist with the setup and/or managing of a multinational business that has been established in Samoa.</i></li> </ul>	\$600.00	\$1200.00



<b>Consultancy</b> <i>Include:</i> <ul style="list-style-type: none"> <li>• <i>Non-citizens who wish to conduct consultancy work for a period of three (3) months or more, must apply for a permit.</i></li> </ul>	\$700.00	\$1300.00
<b>Employment / Extensions for more than three months but less than 1 year</b> <i>Include:</i> <ul style="list-style-type: none"> <li>• <i>Non-citizens who are required to stay longer to complete unfinished work or project, and or conducting trainings for capacity building of local staff.</i></li> </ul>	\$500.00	\$800.00
<b>Administrative Charges</b>		
Lodgement Fee to MCIL per application	\$100.00	\$100.00
Urgency Fee to MCIL per application	\$250.00	\$250.00
Replacement of FEEP ID Card	\$30.00	\$30.00

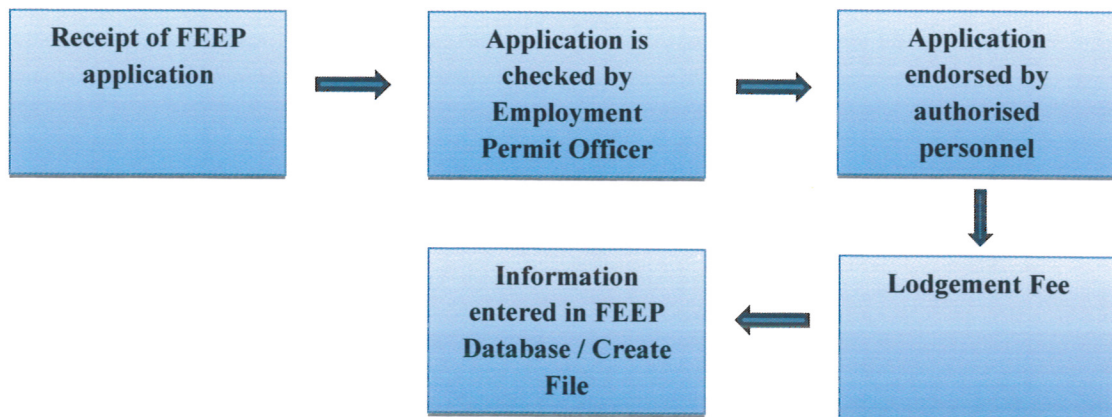
**NOTE:**

In accordance with section 60(3) of the Labour and Employment Relations Act 2013 the following is noted:

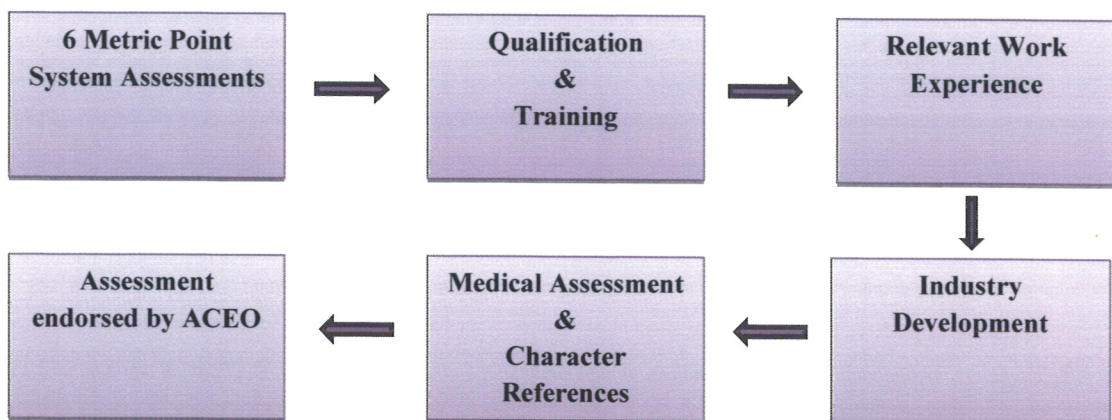
- The approval of the FEEP Application is dependent on any other conditions approved by the Minister, and/or
- Relevant provision of other National legislations, and/or
- Requirements stipulated in the FEEP Policy Framework 2016.

## OVERVIEW OF THE FEEP PROCESS

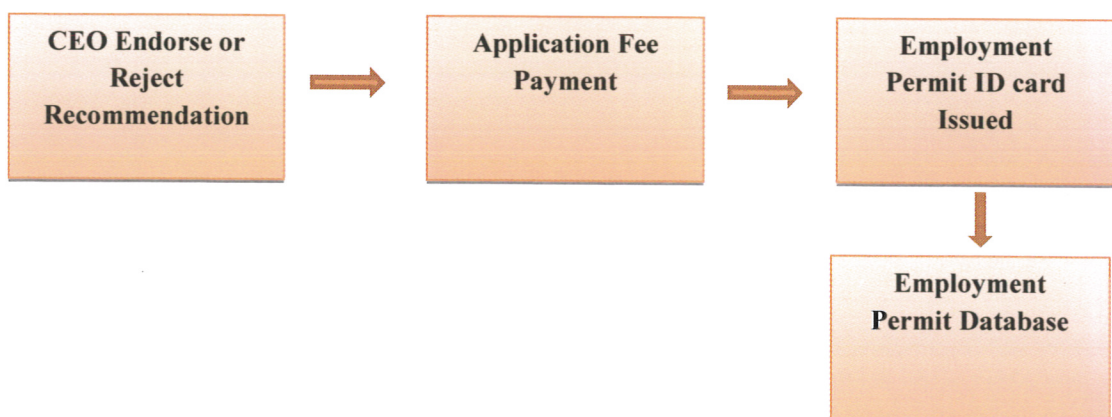
### Phase 1: Pre-Assessment



### Phase 2: 6 Metric Point System Assessment



### Phase 3: Post-Assessment



*Note: The standard assessment period is between 5 to 10 working days. However, depending on the need for additional information and investigation, the process may take longer.*