

2005 *Public Bodies (Performance and Accountability) No.5*
Amendment

SAMOA

Arrangement of Provisions

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2005, No.5

AN ACT to amend the Public Bodies (Performance and Accountability) Act 2001. [22nd April 2005]

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

1. Short title and commencement-(1) This Act may be cited as the Public Bodies (Performance and Accountability) Amendment Act 2005 and shall be read with and form part of the Public Bodies (Performance and Accountability) Act 2001 (the Principal Act).

(2) This Act shall commence on the date of assent by the Head of State.

(3) Notice of commencement of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

2. Long title - The Principal Act is amended by:

- (a) deleting the words “the provision of” in paragraph (a) of the long title; and
- (b) deleting paragraph (d) of the long title and substituting the following:

“(d) Provide support for Shareholding Ministers on matters relating to Public Bodies.”

3. Interpretation - Section 2 of the Principal Act is amended:

(1) By deleting the definition “Governing legislation” and substituting the following:

“Empowering Act” means an Act which provides for the establishment, purposes, functions and governance of an individual public body;”.

(2) By deleting the definition “Public Body” and substituting the following:

“Public Body” means an organisation (whether called state-owned enterprise or otherwise under any other Act) that is listed in Schedule 4 of the Public Finance Management Act 2001 or is deemed to be a

public body under section 91 of the Public Finance Management Act 2001 and shall include a subsidiary of the Public Body and includes the organisations listed in Schedule 1 of this Act;”.

(3) By deleting the definition “Public Beneficial Body” and substituting the following:

“Public Beneficial Body” means an organisation that exists mainly for the provision of service to the community in accordance with government policy and includes the organisations listed in Part B of Schedule 1 of this Act and any subsidiary of a Public Beneficial Body;”.

(4) By deleting the definition “Public Trading Body” and substituting the following:

“Public Trading Body” means an organisation that exists mainly for the purpose of optimising returns on investment of public funds and includes the organisations listed in Part A of Schedule 1 of this Act and any subsidiary of a Public Trading Body;”.

(5) By deleting the definition “Shareholding Ministers” and substituting the following:

“Shareholding Ministers” means the Minister of Finance and the Responsible Minister and, where the Minister of Finance is also the Responsible Minister, a Minister who is approved by Cabinet to be a Shareholding Minister for the purpose of this Act;”.

(6) By deleting the word “bare” in paragraph (c)(ii) of the definition “Shares” and substituting the word “bear”.

(7) By deleting the words “Schedule 1 provides the list of Public Bodies” in subsection (2).

4. Transfer to the Companies Act 2001 - Section 5 of the Principal Act is deleted and the following substituted:

“5. Transfer to the Companies Act 2001-(1) Despite the provisions of any other law and subject to subsection (2), each Public Trading Body shall register as a company under the Companies Act 2001 at a time and in such form of registration as determined by the Minister of Finance.

(2) A Public Trading Body which is incorporated as a mutual society shall not be required to comply with subsection (1) but, despite the provisions of any other law, shall comply with the provisions of this Act as if the Shareholding Ministers were the major shareholders of the Public Trading Body. For the purposes of this Act, Samoa National Provident Fund, Samoa Life Assurance Corporation and Accident Compensation Corporation are mutual societies.

(3) Save for the organisations referred to in subsection (2), each Public Trading Body shall have Articles of Incorporation under the Companies Act 2001 and such Articles of Incorporation shall be the Articles of Incorporation in Schedule 7 of this Act with such amendments and modifications as may be approved by the Shareholding Ministers on the advice of the Financial Secretary.

(4) Despite the provisions of any other law:

- (a) If there is any inconsistency between an individual public trading body's empowering Act, the Companies Act 2001, the Public Finance Management Act 2001 and this Act, the provisions of this Act shall prevail to the extent of the inconsistency;
- (b) If there is any inconsistency between an individual public trading body's empowering Act, the Companies Act 2001 and the Public Finance Management Act 2001, the provisions of the Public Finance Management Act 2001 shall prevail to the extent of the inconsistency;

- (c) If there is any inconsistency between an individual public trading body's empowering Act and the Companies Act 2001, the Companies Act 2001 shall prevail to the extent of the inconsistency;
- (d) If there is any inconsistency between the Companies Act 2001 and a public trading body's Articles of Incorporation the provisions of the Articles of Incorporation shall prevail to the extent of the inconsistency."

5. Ministerial Shareholding - Section 6 of the Principal Act is amended:

(1) By deleting subsection (1) and substituting the following:

“(1) Shares in a Public Trading Body held by Shareholding Ministers are:

- (a) held ex officio on behalf of the Independent State of Samoa; and
- (b) to be registered in accordance with paragraph (a).”

(2) By deleting from subsection (4) all words after the word “purpose”.

(3) By deleting subsection (5) and substituting the following:

“(5) The Responsible Minister is responsible to Parliament for the performance of Public Bodies under the Minister's portfolio.”

(4) By deleting from subsection (7) the words “Responsible Minister” and substituting the words “Shareholding Ministers”.

6. Principal objective to be a successful business - The Principal Act is amended by deleting section 8 and substituting the following:

“8. Principal objective to be a successful business - Subject to the Companies Act 2001, the principal objective of every Public Trading Body shall be to operate as a successful business and, to this end:

- (a) Be as profitable and efficient as comparable businesses that are not owned by the State; and
- (b) Meet any community service obligations established under Part III of the Act; and
- (c) Comply with the provisions of the Labour and Employment Act 1972, notwithstanding the provisions of that Act; and
- (d) Be an organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates.”

7. Definition of Community Service Obligation - Section 9(1) of the Principal Act is amended:

(1) By deleting paragraph (c) and substituting the following:

“(c) the forbearance by a Public Trading Body to exercise a right or entitlement on normal commercial terms applying from time to time.”

(2) By deleting paragraph (d).

8. Minister may direct Community Service Obligation - Section 10(a) of the Principal Act is amended by deleting the word “universal”.

9. Principal objective to be a successful Public Beneficial Body – The Principal Act is amended by deleting section 14 and substituting the following:

“14. Principal objective to be a successful Public Beneficial Body - The principal objective of every Public Beneficial Body shall be to provide service to its users and to this end:

- (a) Meet the purposes and objectives of its empowering Act; and

- (b) Operate in as efficient and effective manner as comparable organisations that are not owned by the State; and
- (c) Comply with the provisions of the Labour and Employment Act 1972, notwithstanding the provisions of the Act; and
- (d) Be an organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates.”

10. Role of Directors of Public Trading Bodies - The Principal Act is amended by deleting section 16 and substituting the following:

“16. Role of Directors of Public Trading Bodies - Every director of a Public Trading Body shall:

- (a) ensure that the Public Trading Body complies with the provisions of the Companies Act 2001 and the provisions of this Act, to the extent that they are applicable; and
- (b) comply with the requirements of Schedule 8 (Directors' Roles and Responsibilities) in so far as such requirements apply to a director of a Public Trading Body.”

11. Decisions by Directors of Public Trading Bodies - Section 17 of the Principal Act is amended:

- (1) By deleting the words “section 8 of the Act” in subsection (1) and substituting the words “this Act”.
- (2) By deleting the word “act” in subsection (2) and substituting the word “Act”.
- (3) By deleting the words “section 8 of the” in subsection (2) and substituting the word “this”.

12. Role of Directors of Public Beneficial Bodies - The Principal Act is amended by deleting section 18 and substituting the following:

“18. Role of Directors of Public Beneficial Bodies -

Every Director of a Public Beneficial Body shall:

- (a) ensure that the Public Beneficial Body provides service to its users in accordance with section 14; and
- (b) comply with the requirements of Schedule 8 (Directors' Roles and Responsibilities) in so far as such requirements apply to a director of a Public Beneficial Body.”

13. Decisions by Directors of Public Beneficial Bodies -

Section 19 of the Principal Act is amended by deleting the word “excellent” in subsections (1) and (2).

14. Declaration of Pecuniary Interests and Convictions -

Section 20 of the Principal Act is amended:

(1) By deleting subsection (1) and substituting the following:

“(1) Every director of a Public Body shall, prior to a date determined by the Minister of Finance by Notice, and annually thereafter by 30th June, provide a Declaration of Pecuniary Interests and Convictions, in the form provided in Schedule 4 of the Act, to:

- (a) The Shareholding Ministers; and
- (b) The Controller and Chief Auditor; and
- (c) The Financial Secretary; and
- (d) The Registrar of Companies (in the case of directors of Public Trading Bodies); and
- (e) The officer exercising the functions of secretary (or its equivalent howsoever called) of the public body of which the director is a director.”

(2) By deleting subsection (3) and substituting the following:

“(3) Each Declaration of Pecuniary Interests and Convictions shall be available for public inspection at the office of the Registrar of Companies (in the case of a Public

Trading Body) on payment of a fee set by the Registrar of Companies and at the office of the Public Body during normal business hours, on payment of a fee set by the Minister of Finance.”

(4) By deleting subsection (4) and substituting the following:

“(4) The Registrar of Companies (in the case of a Public Trading Body) and the officer exercising the functions of secretary (or its equivalent howsoever called) of the Public Body shall keep a register of Pecuniary Interests and Convictions to enable the public to exercise their rights under subsection (3).”

15. Corporate Plan - Section 22 of the Principal Act is amended:

(1) By deleting subsection (1) and substituting the following:

“(1) The Board of Directors of each Public Body shall prepare a Corporate Plan in accordance with instructions issued by the Financial Secretary from time to time and shall forward a copy of the draft Corporate Plan to each Shareholding Minister, the Controller and Chief Auditor and the Financial Secretary prior to the commencement of each financial year.”

(2) By deleting subsection (3) and substituting the following:

“(3) The approval process for the Corporate Plan is set out in Schedule 5.”

(3) By deleting subsections (4) and (5).

(4) By deleting subsection (6) and substituting the following:

“(4) The Statement of Corporate Objectives referred to in subsection (2), once approved, shall be laid before the Legislative Assembly by the Responsible Minister within 14

days of the approval of the Public Body's Corporate Plan, or where the Legislative Assembly is not sitting, at the commencement of the next sitting.

(5) The Public Body shall forward a copy of the approved Corporate Plan to the Controller and Chief Auditor.”

16. Financial Reports, Accounts and Information - The Principal Act is amended by deleting section 23 and substituting the following:

“**23. Reports and Financial Statement** - Each Public Body shall prepare reports and financial statements in accordance with the requirements of Schedule 6 and shall forward such reports and financial statements in the manner provided in Schedule 6.”

17. Director liable to be dismissed - Section 25 of the Principal Act is amended by deleting the words “any governing legislation” and substituting the words “an empowering Act, Cabinet acting on the advice of”.

18. Controller and Chief Auditor to be auditor of Public Bodies - Section 27 of the Principal Act is amended:

(1) By deleting the words “governing legislation” from subsection (1) and substituting the words “empowering Act”.

(2) By deleting the word “prescribed” from subsection (2) and substituting the word “set”.

(3) By deleting subsection (3) and substituting the following:

“(3) The Controller and Chief Auditor may contract out the Controller and Chief Auditor's functions under this section.”

19. Support for Shareholding Ministers - The Principal Act is amended by deleting Part VII and substituting the following:

Part VII**SUPPORT FOR SHAREHOLDING MINISTERS**

“28. Support by the Financial Secretary-(1) The Financial Secretary shall provides Shareholding Ministers with:

- (a) advice concerning Corporate Plans, Statements of Corporate Objectives and financial reports ; and
- (b) analysis, advice and information concerning the performance of any Public Body and compliance with the Act by any Public Body or person; and
- (c) advice on expenditure, advances, credit support and guarantees to be made, sought or provided in relation to a Public Body; and
- (d) financial, commercial and public policy analysis and advice in relation to Public Bodies and in relation to corporatisation and/or privatisation of Public Bodies; and
- (e) advice on the appointment of directors and boards of Public Bodies so as to encourage and enhance efficiencies and service delivery; and
- (f) information and advice in relation to best practice by Public Bodies so as to encourage and enhance efficiencies and service delivery; and
- (g) other information and advice as requested by a Shareholding Minister.

(2) The Financial Secretary shall be responsible for monitoring the performance of Public Bodies on behalf of the Shareholding Ministers and advising them in respect of the Government’s investment in Public Bodies.

(3) The Financial Secretary may from time to time issue instructions as deemed necessary or expedient to give full effect to this Act and for the administration thereof and, without limiting this section, such instructions may cover:

- (a) Government policy, including policies on dividends and investments;

- (b) The form and content of Corporate Plans; and
- (c) The form and content of Annual Reports.
- (4) Public Bodies shall observe any instructions issued by the Financial Secretary under subsection (3).”

20. Powers - Section 30 of the Principal Act is amended by inserting the word “lawful” after the words “power to do all”.

21. Delegation - Section 31 of the Principal Act is amended by deleting the words “save for this power of delegation”.

22. Regulations - Section 32 of the Principal Act is amended:

(1) By inserting the expression “(1)” following the heading to the section.

(2) By deleting subsection 1(a) and substituting the following:

“(a) Required or permitted by the Act to be prescribed including amendment of, or addition to, the Schedules; or”

(3) By inserting the following after subsection (1):

“(2) All regulations made under this section shall be laid before the Legislative Assembly by the Minister of Finance within 14 days of the date of the making thereof if the Legislative Assembly is then in session, and if not, at the commencement of the next session.”

23. Other amendments - The Principal Act is amended:

(1) By deleting sections 2(3), 2(4), 12(2), 12(3), 15(4), 15(5), 20(6) and 20(7).

(2) By deleting the Samoan tala amounts for penalties in sections 13(1), 13(2), 17(2), 19(2) and 21(1).

(3) By deleting the expression “(1)” in section 12.

(4) By deleting the words “governing legislation” in sections 24 (4) and 26(1) and substituting the words “empowering Act”.

24. Schedules-(1) The Principal Act is amended:

(1) By deleting the heading “Corporate Plan” from Schedule 5 and substituting the heading “Approval Process for Corporate Plans”.

(2) By inserting the following after Schedule 6:

“Schedule 7

Model Articles

Schedule 8

Directors’ Roles and Responsibilities”.

**The Public Bodies (Performance and Accountability) Amendment
Act 2005 is administered in the Ministry of Finance**