

**ALIENATION OF CUSTOMARY LAND
AMENDMENT BILL 2017**

SAMOA

Arrangement of Provisions

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2017, No.

A BILL INTITULED

AN ACT to amend the Alienation of Customary Land Act 1965 (“Principal Act”).

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 Alienation of Customary Land Amendment Act 2017.
- (2) This Act commences on the date of assent by the Head of State.

2. Section 4 amended:

Section 4 of the Principal Act is amended as follows:

- (a) insert after subsection (1) the following new subsection (1A):

“1A. Despite that the lease or licence is approved by the Minister as trustee for beneficial owners under subsection (1), the beneficial owners have the following rights in relation to such lease or licence granted:

- (a) the right to approve or disallow the use of the lease as security;
- (b) the right to approve or disallow the assignment of the lease or licence whether as a result of a default by mortgagor or not;
- (c) the right to receive payments in accordance with the terms of the lease or licence;
- (d) the right to approve or disallow a sub-lease;
- (e) the right to initiate and enforce a review of rents as provided for by the terms of the lease;
- (f) the right to enforce beneficial covenants under the terms of the lease or licence, including obligations of the lessee or licensee to -

- (i) provide employment, to assist in business development; or
- (ii) to provide community services or infrastructure; and
- (iii) the right to enforce environmental protection obligations applying to the lessee or licensee under the terms of the lease or licence.”; and

(b) substitute subsection (3) with the following:

“(3) The process of registration and discharge of such mortgages is set out in the Regulations made pursuant to this Act.”.

3. Insertion of new section 5A:

The Principal Act is amended by inserting after section 5 the following new section:

“5A. Access by licence:

- (1) For a license granted under section 5 on the following terms:
 - (a) the term does not exceed one (1) year;
 - (b) the customary ownership of the land has been determined by the Land and Titles Court; and
 - (c) the beneficial owners have signed the license, the beneficial land owners of that license, have the authority to grant reasonable access to and use of their customary land.”.

4. Section 6 amended:

Section 6(1) of the Principal Act is amended by inserting after the number 5, the words "or section 5A".

5. Section 8 amended:

Section 8 of the Principal Act is amended as follows:

- (a) for subsection (1) after the word "Savali" insert "or any newspaper or television and other forms of advertising determined by the Chief Executive Officer"; and
- (b) for subsection (2) -
 - (i) after the word "Savali" insert "or any newspaper or television and other forms of advertising determined by the Chief Executive Officer"; and
 - (ii) substitute "3 months" with "6 months"; and
- (c) after subsection (2) insert the following new subsection:

“(2A) The Chief Executive Officer may extend the period under subsection (2) if the Chief Executive Officer considers that further time is warranted for a particular application.”; and

- (d) in subsection (3)(a) insert after "the application is made"; the following proviso:

“**PROVIDED THAT** a copy of such determination by the Land and Titles Court is provided to the Chief Executive Officer”; and

- (e) in subsection (3)(b)(ii) substitute the word "Savali" with "under this section".

6. Section 16 substituted:

For section 16 of the Principal Act, substitute with the following:

“16. Powers to recover rents:

- (1) The right to recover rents and other sums due under a lease or licence in accordance with any law or legal process is exercisable by the Minister, acting on behalf of the beneficial customary landowners.
- (2) The beneficial customary landowners also have power to commence and undertake legal proceedings for the recovery of rents and other monies due under a lease or licence granted under this Act, even if the lease or licence has been made on their behalf by the Minister.
- (3) When taking action under subsection (2), the beneficial customary landowners (or their legal representative) have the right to commence and undertake the proceedings, and any proceedings to execute any order or judgment made in their favour, without the consent or involvement of the Minister.”.

7. Insertion of new Part 3:

The Principal Act is amended by inserting after section 18 the following new Part 3:

**“PART 3
PROVISIONS APPLICABLE TO MORTGAGES
OF LEASES OVER CUSTOMARY LAND**

19. Mortgages of leases of customary lands:

- (1) If a lease of customary land is to be mortgaged, the mortgage:
 - (a) must not be created, except with the prior written consent of the beneficial owners of the customary land; and

- (b) must be registered under the Land Titles Registration Act 2008; and
 - (c) registration under paragraph (b) does not confer a right of ownership over the customary land.
- (2) A second or subsequent mortgage on a lease of customary land:
- (a) is prohibited;
 - (b) must not be registered; and
 - (c) if created or registered, is void.
- (3) A mortgagee of a lease on customary land:
- (a) must not take an action over the mortgaged lease unless the action is permitted under this Act or Regulations made pursuant to this Act;
 - (b) must first pay any outstanding lease rental payments from any money recovered when exercising the default right under the mortgage.

20. Assignment of leases of customary land subject to mortgage:

The lessee of customary land that is subject to a mortgage, must not assign the lease except with the prior written consent of the beneficial owners of the customary land.

21. Regulations:

The Head of State may, acting on the advice of Cabinet, make regulations to give effect to this Part.

22. Acts not to apply:

None of the following Acts apply to mortgages of leases over customary land:

- (a) Land Titles Registration Act 2008 except the process of registration and discharge of such mortgages applies; and
- (b) Property Law Act 1952.

23. Consequential amendment:

Section 34 of the Land and Titles Act 1981 is amended by inserting after subsection (2) the following:

“(2A) Despite, subsection (2), any disputes relating to or arising from a lease agreement over customary land made under the Alienation of Customary Land Act 1965, must be determined by the Supreme Court.”.

8. Section 19 renumbered:

Section 19 of the Principal Act is renumbered as section 24.
