

FOUNDATIONS AMENDMENT BILL 2017

SAMOA

Explanatory Memorandum

Objects and Reasons:

The Bill seeks to amend the Foundations Act 2016 (“Principal Act”).

The objects of the Bill are:

- (a) to insert new definitions within the principal Act;
- (b) to ensure that, if a resident agent resigns, there must be a replacement resident agent appointed by the foundation or the registrar;
- (c) to remove the requirement for written confirmation of the Attorney General when a foundation is removed from the Register in Samoa because such a foundation decides to migrate out of Samoa to be registered elsewhere;
- (d) removes the need for the approval of the National Revenue Board with respect to fees to be prescribed by regulations;
- (e) to empower the Registrar to impose monetary sanctions by way of regulations for non-compliance with administrative provisions of the Principal Act;

- (f) to insert new provisions regarding provide detailed provisions for the striking-off of a foundation from the Register and for its restoration to the Register and the appointment of an appointed individual to replace a resident agent; and
- (g) to insert a whole new Part 11 to provide for situations and procedure for when foundations decide to merge together and the effects of such merger.

Clauses:

- Clause 1:** - provides for the short title and commencement date of the Bill.
- Clause 2:** - amends section 2 of the Principal Act to insert new terms to be defined, namely, definition for “Minister” and “person”.
- Clause 3:** - amends section 12 of the Principal Act to provide that if a resident agent resigns there need to be an immediate replacement.
- Clause 4:** - amends section 67 of the Principal Act by repealing section 67(2)(a) to remove the requirement that the Attorney General has to confirm that he or she has no objection to the removal of a foundation from the register.
- Clause 5:** - amends section 89 of the Principal Act to remove the approval by the National Revenue Board of fees prescribed by regulations.
- Clause 6:** - inserts new Part 7A in the Principal Act to provide for the merger of foundation.
- Clause 7:** - inserts new Part 8A which provides for striking off and restoration of foundations and appointment of an appointed individual instead of a resident agent in certain circumstances.

- Clause 8:** - inserts new section 90A in the Principal Act which authorises the Registrar to impose monetary sanctions by way of regulations for the non-compliance with administrative provisions of the Principal Act.
- Clause 9:** - makes general amendments to the whole Principal Act to substitute references to “registered agent” to “resident agent”.
- Clause 10:** - amends schedule 4 of the Principal Act to substitute “financial penalties” in clause 6(6)(c) with “monetary sanctions”.

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(Hon SILI Epa Tuioti)

**MINISTER OF FINANCE AND MINISTER RESPONSIBLE FOR
SAMOA INTERNATIONAL FINANCE AUTHORITY**