

TRUSTEE COMPANIES BILL 2017

SAMOA

Explanatory Memorandum

Objects and Reasons:

The objects of this Bill are:

- (a) to repeal the Trustee Companies Act 1988 which is outdated, particularly with regard to the present regulatory standards and requirements;
- (b) to cover new standard on the regulation of trust and corporate service providers (“the standard”) in order for Samoa to comply with best standards;
- (c) to have appropriate exemption from licensing both for private trustee companies, and for professionals offering “trust business”, to provide yet another legitimate solution for those who wish to use Samoa for their trusts to retain control of trust property;
- (d) will cover 3 separate types of licences for a Trust Company Service Provider (“TCSP”), namely -
 - (i) a TCSP Licence for financial services business (including trust business) generally;
 - (ii) a trust licence for trust business only; and
 - (iii) a Service Licence for all other financial services business, other than trust business;

- (e) the TCSP Licence enables a TCSP to apply for one composite licence so that it does not have to apply for one licence for trust business and another licence for all other financial services business;
- (f) to introduce managed trustee companies, which means that a TCSP, which is licensed in Samoa can apply for an appropriate licence for another TCSP to manage it. This enables an interested TCSP to start as a managed entity and then move on later to have its own licence when their business permits;
- (g) seeks to place less importance on the capitalisation of a TCSP (in order to attract business and provide for relative importance), which should still be both sensible and reasonable but thoroughly competitive, than with regard to the scope and level of its indemnity insurance, which should be wholly adequate having regard to the TCSP's business ongoing and be kept under review by the Regulator.

Clauses:

**PART 1
PRELIMINARY**

- Clause 1:** - provides for the short title and commencement.
- Clause 2:** - provides for the definitions of certain terms.

**PART 2
ADMINISTRATION**

- Clause 3:** - sets out the functions of the Regulator who is the Chief Executive Officer ("CEO") of Samoa International Finance Authority ("Authority").

- Clause 4:** - provides for delegation by the Regulator to deputies or officers of the Authority.
- Clause 5:** - empowers the Regulator to issue directions to TCSPs.
- Clause 6:** - deals with the approval of foundation for the definition of “private trustee company”.

PART 3

LICENSING OF TRUSTEE COMPANIES

- Clause 7:** - provides for the requirement for licensing of a trustee company.
- Clause 8:** - regulates maintaining of capital of a licensed TCSP.
- Clause 9:** - provides the duties of the Authority to monitor capital and liquidity and other requirements of a TCSP.
- Clause 10:** - deals with insurance to cover any claim for civil liability.
- Clause 11:** - regulates and restricts use of names of trustee companies.

PART 4

OPERATION OF TRUST COMPANY SERVICE PROVIDERS

Division 1 - Powers

- Clause 12:** - provides for the general powers of a TCSP.
- Clause 13:** - provides for the power of a TCSP to act as trustee, executor or agent.

- Clause 14:** - provides that a beneficiary can indemnify a TCSP from liability for breach of trust.
- Clause 15:** - provides for delegation to a TCSP.
- Clause 16:** - empowers TCSPs to delegate to a director, Secretary, or other officer.
- Clause 17:** - provides for a TCSP to act through its subsidiary.
- Clause 18:** - provides that if a TCSP is appointed as an executor, etc., it is subject to the same control, etc., by the Court of an executor, etc.
- Clause 19:** - provides that an officer authorised by the TCSP can make affidavit on its behalf.
- Clause 20:** - provides that a TCSP can act through a power of attorney.
- Clause 21:** - entitles TCSPs to charge fees, etc.
- Clause 22:** - entitles TCSPs to charge a fee for managing estates of deceased persons.
- Clause 23:** - entitles TCSPs to charge director's fees.

Division 2 - Financial services business

- Clause 24:** - provides for licensing of financial services business of a TCSP, subject to exemptions.
- Clause 25:** - provides for 3 types of licences for financial services business.
- Clause 26:** - provides for the application for licences for financial services business.
- Clause 27:** - provides for the duty of the applicant to provide further information on the application.

Division 3 - Managed TCSPs

- Clause 28:** - provides for the approval of managing TCSP to manage the business of a managed TCSP and for the grant of a Managing Licence to a firm to do the same.

Division 4 - Changes

- Clause 29:** - provides the duty of TCSP to report any change to it to the Regulator.

Division 5 - Professional duties and conduct

- Clause 30:** - sets out the professional duties of TCSPs.
Clause 31: - sets out the required professional conduct of TCSPs.

PART 5

RECORDS, ACCOUNTS, AUDIT AND DATA

- Clause 32:** - provides the duties of TCSPs to maintain and keep records, etc.
Clause 33: - provides the duties of TCSPs relating to data protection.

PART 6

MONITORING AND ENFORCEMENT

- Clause 34:** - provides the duties of TCSPs to have policies, etc., on anti-money laundering and counter terrorism financing, etc.

- Clause 35:** - provides for the Authority's power of inspection, investigation, etc.
- Clause 36:** - provides the right of a person to go to Court for an order to examine accounts, etc.
- Clause 37:** - deals with the power of search and entry under a warrant obtained from the Court or its Registrar.
- Clause 38:** - provides for other actions that the Authority may take against TCSPs.
- Clause 39:** - provides for the power of the Authority to revoke licence.
- Clause 40:** - empowers the Authority to apply to the Court if a voluntary winding-up was not conducted in the best interest of the clients or creditors.
- Clause 41:** - provides for appeals on certain decisions of the Authority if they are ultra vires or unreasonable.

PART 7

INFORMATION AND OTHER FORMS OF CO-OPERATION

- Clause 42:** - provides for the sharing of information by the Regulator with foreign regulators etc.
- Clause 43:** - provides for other forms of co-operation.

PART 8

MISCELLANEOUS

- Clause 44:** - provides for the taxation of a TCSP in Samoa.
- Clause 45:** - provides the Regulator with power to impose monetary sanctions for non compliance with administrative provisions under the Act. Such sanctions are to be prescribed under regulations.

- Clause 46:** - enables the Regulator to obtain statistics from a TCSP.
- Clause 47:** - provides for general immunity.
- Clause 48:** - provides for procedures where no form is prescribed or procedure laid down in this Act or Regulations.
- Clause 49:** - empowers the Head of State acting on the advice of Cabinet to make regulations.
- Clause 50:** - repeals the Trustee Companies Act 1988.
- Clause 51:** - deals with transitional and saving matters.
- Clause 52:** - provides for consequential amendments to other legislation.

SCHEDULES

- Schedule 1:** - provides a list of connected persons.
- Schedule 2:** - deals with matters constituting corporate governance requirements.
- Schedule 3:** - lists exempted persons.
- Schedule 4:** - sets out the criteria for fit and proper persons.
- Schedule 5:** - provides for making of codes by the Authority.
- Schedule 6:** - provides for the duties of Regulator.
- Schedule 7:** - sets out the principles for data protection.

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(Hon SILI Epa Tuioti)

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