

SAMOA

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Schedules

2017, No. 17

AN ACT to regulate trustee companies and for related purposes.

[Date of Assent: 17th November 2017]

[Commencement Date: 17th November 2017]

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

PART 1
PRELIMINARY

1. Short title and commencement:

- (1) This Act may be cited as the Trustee Companies Act 2017.
- (2) This Act commences on the date of assent.

2. Interpretation:

In this Act, unless the context otherwise requires:

“Authority” has the same meaning as provided in the Samoa International Finance Authority Act 2005;

“board” means the board of directors of a TCSP;

“beneficial owner” means any natural person who ultimately owns or controls any person on whose behalf a transaction is being conducted and includes any person who exercises ultimate control over a legal person or an arrangement;

“code” means a code issued under Schedule 5;

“company” means a Samoan international company and a Samoan domestic company;

“connected person” means a person listed in Schedule 1;

“controller” means a shareholder controller and any other person, who, in the view of the Regulator, exercises directly or indirectly significant influence over all or any matters which concern a TCSP;

“corporate governance requirement” means any matter referred to in Schedule 2 or prescribed by regulations;

“deputy” means a person appointed under section 4(1);

- “directions” means a directions issued under section 5;
- “exempt person” means a person listed in Schedule 3;
- “FATF” means the Financial Action Task Force on Money Laundering established in 1989 by the G-7 Summit;
- “financial services business”:
- (a) means a trust business or any of the activities required to constitute a TCSP; and
 - (b) includes any other activity prescribed by regulations.
- “firm” means a partnership of Samoan registered lawyers or of Samoan registered accountants, a registered sole practitioner in Samoa as a lawyer or accountant or a company wholly owned by any of them;
- “fit and proper person” means a person who:
- (a) for controller, complies with the requirements set out in Part 1 of Schedule 4;
 - (b) for a key person, complies with the requirements set out in Part 2 of Schedule 4;
 - or
 - (c) for an officer, complies with the requirements set out in Part 3 of Schedule 4.
- “foundation” has the same meaning in the Foundations Act 2016;
- “key person” means a director, partner, money laundering reporting officer, money laundering compliance officer or compliance officer of a TCSP;
- “law” has the same meaning as provided in the Acts Interpretation Act 2015;

“managed TCSP” means a TCSP the business of which is managed under section 28 of this Act, and includes any of its key persons or shareholder controllers;

“Managing Licence” means a licence for a firm to manage the business of managed TCSP;

“managing TCSP” means a trustee company which is managing the business of another TCSP under section 28 of this Act;

“MCIL” means the Ministry of Commerce, Industry and Labour;

“Minister” means the Minister of Finance for Samoa;

“monetary sanction” means an amount in \$ specified from time to time in regulations and payable immediately to the Authority by the TCSP upon receipt of notice to pay from the Regulator to the TCSP in respect of any breach of or non-compliance with the provisions of this Act or of any regulations concerning this Act;

“officer” of a company includes a director, managing director, secretary, chief executive officer, manager or employee, of the company;

“person” has the same meaning as provided in the Acts Interpretation Act 2015;

“private trustee company”:

- (a) means a company or foundation -
 - (i) the purpose of which (subject to paragraph (b)) is solely to carry on business as a trustee company for any specific trust if:

- (A) each settlor of that trust is a connected person to any other settlor of that trust; and
- (B) each beneficiary of that trust is a connected person to the settlor of that trust or is a charity; and
- (ii) which does not solicit the public to carry on business as a trustee company nor carries on business as a trustee company for the benefit of the public; and
- (b) includes a foundation approved under section 6.

“Regulator” means the Chief Executive Officer of the Authority;

“Service Licence” means a licence issued to a trustee company to carry out all financial services business other than trust business;

“shareholder controller” means a person who:

- (a) holds, directly or indirectly, at least 15% of the issued share capital of a TCSP;
- (b) is entitled to exercise or control the exercise of at least 15% of the voting power in a general meeting of a TCSP; or
- (c) has a holding in the TCSP directly or indirectly which, in the view of the Regulator, makes it possible to exercise significant influence over the management of the TCSP.

“Supreme Court” has the same meaning as provided in the Acts Interpretation Act 2015;

“TCSP” (trust company service provider), means a trustee company which is licensed to undertake any one or more of the following activities:

- (a) acting as a corporate or partnership formation agent;
- (b) acting as (or arranging for another person to act as) a director, secretary or official of a company or a partner of a partnership or as an official of a foundation;
- (c) providing administration or management of a trust, company, partnership, foundation or for any other person or legal arrangement;
- (d) providing registered office, business address for accommodation, correspondence for administrative address for a company, partnership, foundation or for any other person;
- (e) acting as a resident agent for the purposes of meeting requirements to hold beneficial ownership or interest information;
- (f) acting as (or arranging for another person to act as) a trustee of an express trust;
- (g) acting as (or arranging for another person to act as) a nominee shareholder for another person.

“TCSP Licence” means a licence issued to a trustee company to provide financial services business;

“trust business” means the business of a TCSP in acting as a trustee of any trust, providing management and/or administration for any such trust and undertaking any matters or acting in any way ancillary thereto;

“trustee company” means a company licensed as such under Parts 3 and 4;

“Trust Licence” means a licence issued to a trustee company to carry out trust business only;

“vehicle”, means a company, partnership, limited partnership, limited liability partnership, foundation or trust;

“\$” means and refers to United States Dollars (US\$).

PART 2

ADMINISTRATION

3. Functions of the Regulator:

The functions of the Regulator are, subject to the direction and control of the Authority:

- (a) to administer this Act;
- (b) to carry out the duties listed in Schedule 6; and
- (c) to carry out the duties and powers under this Act.

4. Deputies:

- (1) The Regulator may, with the approval of the Authority, appoint one or more suitably qualified persons as the Regulator’s deputies for the purposes of this Act.

- (2) Subject to the direction and control of the Regulator, a deputy has the powers, duties and functions of the Regulator under this Act.
 - (3) The Regulator may designate any deputy or officer of the Authority to act for the Regulator with regard to any matter under this Act.
- 5. Directions:**
- (1) The Regulator may, in writing, issue directions to all TCSPs on the implementation of this Act.
 - (2) A TCSP that fails to comply with any directions issued under this section may be subject to an action under section 38(2) of this Act or liable to pay a monetary sanction prescribed under section 45.
- 6. Approved foundation for definition of “private trustee company”:**
- (1) The Authority may, on application, approve any other purpose or beneficiary of a private trustee company for the purpose of paragraph (b) of the definition of “private trustee company”.
 - (2) The application is to be made by the founder or the council of the foundation on the form and with the fee prescribed in regulations and submitted by the resident agent to the Authority.

PART 3

LICENSING OF TRUSTEE COMPANIES

7. Prohibition:

- (1) A company must not be licensed unless:
 - (a) it is a company incorporated under the Companies Act 2001; and
 - (b) the aggregate of its capital issued and paid up in cash (which shall not be less than a different minimum value of \$, or an equivalent amount in any other currency approved for that purpose by the Regulator, as specified in regulations for a TCSP Licence, for a Trust Licence and for a Service Licence respectively) and its unimpaired reserves (the value of which is as similarly specified); and
 - (c) if more than one TCSP wholly (whether directly or indirectly) owned within the same group of companies is licensed under Division 2 of Part 4, the aggregate may be applied to and held in any proportions by those TCSPs, as determined by the Regulator.
- (2) A company which contravenes sub-section (1) is liable to a monetary sanction prescribed under section 45.

8. Maintaining of capital:

A licensed TCSP must maintain the aggregate of its capital issued and paid up in cash in unimpaired reserves specified under section 7(1)(b).

9. Monitoring of capital and liquidity:

- (1) The Authority must:
 - (a) monitor the capital and liquidity requirements of a TCSP; and
 - (b) provide requirements (as prescribed by regulations) which -
 - (i) set out minimum standards of net assets and liquidity that TCSPs must maintain, so as to reduce the risk of financial failure;
 - (ii) set out minimum standards of surplus liquid assets to be retained in the business, sufficient to meet the TCSP's expenditure for a specific period if there is a need to have an orderly winding-up of the TCSP; and
 - (iii) require TCSPs to notify the Regulator when the requirements fall below the minimum capital or liquidity requirements established by the Regulator and to provide to the Regulator unaudited financial statements of the TCSP for every six (6) months period of each of its financial years within 21 days of the end of each such six (6) months period.

- (2) A TCSP which fails to comply with the requirements set out in subsection (1)(b)(iii) is liable to a monetary sanction prescribed under section 45.

10. Insurance:

- (1) The Regulator must require a TCSP to effect a policy of insurance in an amount pursuant to subsection (2) with an insurance company approved by the Regulator and in terms approved by the Regulator at its absolute discretion arising from any claim for civil liability incurred in connection with the TCSP's business.
- (2) The Regulator may, for subsection (1), determine the amount (which must not be less than a different minimum value of \$, or an equivalent amount in any other currency approved for that purpose by the Regulator, as specified in regulations with regard to a:
 - (a) TCSP Licence; and
 - (b) Trust Licence; and
 - (c) Service Licence respectively), and of the nature to be fit and proper, having due regard to the nature and type of business carried on by the TCSP.
- (3) If more than one TCSP wholly (whether directly or indirectly) owned within the same group of companies is licensed under Division 2 of Part 4, the Regulator may, at the Regulator's discretion, approve one policy of insurance for such TCSPs.

- (4) If the insurance ceases, the TCSP must immediately notify the Regulator who may attach any special terms and conditions to the TCSP's licence, as the Regulator deems appropriate until the insurance is again effected.

11. Name:

- (1) The Authority may, pursuant to any grounds under subsection (2):
 - (a) refuse to grant a TCSP Licence, or a Trust Licence, or a Service Licence to a trustee company; or
 - (b) revoke the TCSP Licence, or Trust Licence or Service Licence issued to a trustee company.
- (2) The grounds for subsection (1) are that the trustee company is carrying on or intending to carry on business under a name which:
 - (a) so closely resembles or is identical to the name of any company, firm or business, whether within Samoa or another country, as is likely to mislead or deceive; or
 - (b) is likely or calculated to suggest falsely the patronage of, or connection, with some person or authority whether within Samoa or another country; or
 - (c) is likely or calculated to suggest falsely that the trustee company has a special status to or derived from the Government or has the official backing of

or acts on behalf of the Government or of a Ministry, government agency or its official.

PART 4
OPERATION OF TRUST COMPANY
SERVICE PROVIDERS

Division 1 - Powers

12. Powers:

- (1) A TCSP has the following powers:
 - (a) to do all things capable of being done by a trustee company under the International Companies Act 1988;
 - (b) if the TCSP is a trustee of a Samoan trust, has, for that trust, the powers of a trustee under the Trusts Act 2014;
 - (c) if the TCSP is the resident agent of a Samoan foundation, has the powers of a resident agent under the Foundations Act 2016;
 - (d) subject to this Act, if the TCSP is appointed either alone or jointly with any other person as executor in the will or codicil of any testator (whether the will or codicil was made before or after the commencement of this Act), may -
 - (i) act as executor;

- (ii) apply in Samoa or another country for probate of the will and any codicil to it; and
 - (iii) perform and discharge all the acts and duties of an executor as fully and effectively as any other executor;
- (e) subject to this Act, in any case in Samoa or another country in which a person may apply for a grant of letters of administration of the estate of a deceased person (whether with or without the will annexed), that person may -
 - (i) join with a TCSP in an application for a grant of letters of administration of the estate to the person and the TCSP jointly; or
 - (ii) instead of the person applying, authorise a TCSP to apply for a grant of letters of administration of the estate;
 - (iii) if administration of any estate, with or without the will annexed, is granted to a TCSP either alone or jointly with any other person, do and perform all acts and duties which belong to the office of administrator or joint administrator, as the case may be;

- (f) subject to this Act, may be appointed or continue to act as sole trustee, even if it is provided by the terms of the instrument creating the trust or of any power or otherwise, that there is more than one trustee to perform the trust;
 - (g) subject to this Act, may -
 - (i) be appointed as an agent or as trustee under any settlement or other instrument creating a trust, or to perform any trust or duty or power which it is authorised by this Act or by its charter to undertake;
 - (ii) be so appointed whether the settlement or instrument creating the trust or imposing the duty was made or came into operation before or after the commencement of this Act and either as an original or a new trustee or as an additional trustee; and
 - (iii) perform and discharge all the acts, duties and powers of a trustee as fully and effectively as any other trustee.
- (2) If there is a conflict between the powers in the Acts stated under subsections (1)(a) to (c) and powers in this Act, then the powers in this Act prevails.

- (3) For subsection (1)(a), if a TCSP is appointed or continues to act as sole trustee in the circumstances referred to in that subsection, the trustee company is taken to be equivalent to two (2) trustees.
- (4) A TCSP must not be appointed or be entitled to act as sole trustee in any case in which the instrument creating the trust or power expressly:
 - (a) forbids the appointment of a trustee company; or
 - (b) provides that there should be another trustee in addition to a trustee company; or
 - (c) provides that a trustee company must not be appointed to act as a sole trustee.

13. Trustees, etc.:

- (1) Subject to this Act, a TCSP may act as trustee, executor or agent jointly with another TCSP or person, if the instrument under which it acts so provides or if authorised or required to do so by law or if the Court so orders.
- (2) A TCSP is not liable for breach of trust or loss resulting from any act or omission of a prior or joint trustee, executor or agent with whom it is acting, unless the TCSP has itself actively participated in, or assented to, that breach of trust, knowing it to be a breach of trust.
- (3) If a TCSP has power to exercise its discretion subject to a prior veto or consent power held by another person, then the trust instrument may

provide that the TCSP is not liable for any breach of trust or consequence arising from the exercise of the TCSP's discretion under that power of consent or veto.

- (4) Subject to the terms of the trust instrument and to subsection (2), a TCSP which dissents or does not participate in a decision made by the majority of trustees is not liable for the acts of the majority of the trustees pursuant to that decision.

14. Indemnity:

- (1) A beneficiary may relieve a TCSP of liability to the beneficiary for a breach of trust or indemnify a TCSP against any liability it may incur for a breach of trust.
- (2) Subsection (1) does not apply if the beneficiary:
- (a) is a minor or a person under legal disability; or
 - (b) does not have full knowledge of all material facts; or
 - (c) is improperly induced by the trustee to act under subsection (1).

15. Delegation to TCSP:

- (1) Subject to this Act and the Trusts Act 2014, any executor or administrator, trustee or agent may delegate, by deed or writing, to a TCSP, having a TCSP Licence or a Trust Licence, either alone or

jointly with any other person, as the person's attorney, any trusts and powers as may be delegated by the person.

- (2) Any acts done by the TCSP as the delegate is valid even if the delegation is revoked, as against any person dealing with the trustee company without notice of that revocation by the executor, administrator, trustee or agent.

16. Delegation by a TCSP:

- (1) A TCSP may delegate:
 - (a) by resolution of its board, any of its powers, authorities, duties or functions to any of its directors or to its secretary;
 - (b) for any particular matter or class of matters, in writing, any of its powers, authorities, duties or functions, to any of its officers or employees.
- (2) Any act of a director, the secretary, officer or employee under the delegation, is taken to be the act of the TCSP.
- (3) A delegation:
 - (a) may be given either generally or in any particular case or class of cases;
 - (b) may be subject to conditions;
 - (c) may be varied or revoked;
 - (d) does not prevent the TCSP from carrying out those powers, authorities, duties or functions so delegated.

17. Acting through subsidiary companies:

- (1) A TCSP may, for any undertaking of its own business as a TCSP and with the written approval of the Regulator, having regard to the business and operations of the subsidiary or related company, nominate any wholly owned subsidiary company or related company of that TCSP to act as a trustee or nominee to provide services under:
 - (a) the International Companies Act 1988;
 - (b) the Trusts Act 2014;
 - (c) the Foundations Act 2016;
 - (d) any other Act prescribed by regulations.
- (2) A TCSP shall make an application in writing for the written approval of the Regulator specified in sub-section (1) of this section on a form and subject to the payment of a fee prescribed in regulations and the TCSP may liable for a monetary sanction as specified in regulations under section 45 for failure to make such application.
- (3) Subsection (1) is an exception to section 24.
- (4) The Regulator may review (and if necessary revoke) its approval under subsection (1).
- (5) A nominated company is not required to be licensed (whether with a TCSP Licence, or a Trust Licence, or a Service Licence (as the case may be) under this Act as a TCSP, if it remains a wholly owned subsidiary or related company of the TCSP.

- (6) The TCSP must ensure that, apart from subsection (5) of this section, the nominated company complies with all requirements of this Act as though it is the TCSP.
- (7) When a nominated company acts as a trustee or nominee, the TCSP and the nominated company are jointly and severally liable and responsible for the performance of the nominated company's duties and obligations.
- (8) In this section:
 - "duties and obligations" includes any statutory duties and obligations of the trustee company;
 - "nominated company" means a subsidiary company or related company nominated under subsection (1);
 - "related company" means a company which is not a subsidiary of a TCSP but of which the TCSP is directly or indirectly a shareholder controller.

18. Removal from office:

- (1) This section applies if a TCSP has been appointed executor, administrator, trustee, agent or attorney, whether before or after the commencement of this Act.
- (2) If this section applies, the TCSP is subject to the same control and to a removal or restraint from acting and generally to the jurisdiction of the Supreme Court, in the same manner as any other executor, administrator, trustee, agent or attorney.

19. Affidavit of officer:

In any case in which, if it were a natural person, a TCSP would be obliged or authorised to make any affidavit, declaration or statement, the TCSP may do so by any of its officers appointed, in writing, by it for that purpose.

20. Power of attorney:

- (1) A TCSP may act, either alone or jointly with any other person, under any power of attorney by which the TCSP is appointed attorney.
- (2) The powers and duties of the TCSP given under the power of attorney may be carried out by:
 - (a) the managing director, manager or secretary;
 - (b) subject to paragraph (a), any other officer of the company appointed by the board;
or
 - (c) any two (2) directors.
- (3) The capital (both paid and unpaid) and any other assets of the TCSP are liable for the carrying out of the powers so conferred on the company.

21. Fees, charges and expenses:

- (1) A TCSP is entitled:
 - (a) if it holds an estate on behalf of any person, to receive out of the estate, in addition to any moneys properly expended by the company and fees payable to the company, and chargeable against the estate, a commission to be fixed by its board; and

- (b) in any other cases, to levy fees for any work performed by the TCSP for or on behalf of any person.
- (2) However, if under subsection (1)(b):
 - (a) the fee is prescribed by regulations, the prescribed fee must be charged; and
 - (b) the fee is not prescribed, the board must determine the appropriate fee taking into account the circumstances of each case.
- (3) This subsection applies if the Supreme Court is of the opinion that any, fee or commission levied on any estate or work performed by the TCSP is excessive.
- (4) If subsection (3) applies, the Supreme Court may:
 - (a) review that commission or fee, on the application of a person on whose behalf the work was performed; and
 - (b) reduce it, as the Supreme Court thinks fit.
- (5) The commission or fee, which a TCSP is entitled to receive under this section, is not in any way affected or diminished by the fact that any other person may be entitled to a commission or fee for the work performed.
- (6) A TCSP has the right to share the commission or fee to which it is entitled under this section with any other person.
- (7) In this section, "fee" includes charge or expense.

22. Management fees:

A TCSP is entitled to receive out of any estate:

- (a) for any service provided by it in the administration or management of that estate, any management fee as is reasonable having regard to the work involved in providing that service; and
- (b) for any service of an unusual nature provided by it in the administration or management of that estate, any management fee as is reasonable having regard to the work involved in providing that service or the fee as has been agreed to by a majority of the persons interested in the estate.

23. Director's fees:

If an estate has an interest in a company and an officer, in the capacity as the officer, acts as a director of that company for the purposes connected with the administration or management of the estate:

- (a) the TCSP is entitled to receive from the company and to retain any director's fees which would otherwise be payable to the officer; and
- (b) the officer and the estate is not entitled to receive any fees to which the TCSP is entitled to receive under paragraph (a).

Division 2 - Financial services business

24. Prohibition:

- (1) A TCSP must not undertake any financial services business unless the TCSP is licensed to provide financial services business under this Division.

- (2) An exempt person is exempt from being licensed as such under this Division.
- (3) A TCSP that contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding 1000 penalty units or to imprisonment for a term not exceeding 12 months.

25. Choice of different licences:

- (1) A TCSP may have a Trust Licence to carry out a trust business only.
- (2) A TCSP may have a Service Licence to carry out a financial services business other than a trust business.
- (3) A TCSP which has a Service Licence only, must have a separate Trust Licence for its trust business.
- (4) A TCSP which has a Trust Licence only, must have a separate Service Licence for its financial services business other than trust business.
- (5) Despite subsections (1) to (4), a TCSP that is qualified to provide both trust business and other financial services business may apply for one composite TCSP Licence to provide for both trust business and for other financial services business.
- (6) A TCSP that contravenes any of subsections (1) to (5) commits an offence and is liable upon conviction to a fine not exceeding 1000 penalty units or to imprisonment for a term not exceeding 12 months.

- (7) The Regulator shall, as prescribed in regulations, charge separate fees for and with regard to all matters concerning a TCSP Licence, a Trust Licence and a Service Licence, which shall include both the fee for the initial grant of the licence and the annual renewal fee.
- (8) The annual application by a TCSP for the renewal of its licence, whether it is a TCSP Licence, a Trust Licence or a Service Licence, is to be made in a form prescribed by regulations and submitted to the Regulator not less than one (1) month before the expiry of the TCSP's current licence.

26. Application:

- (1) A Samoan domestic company may in the form and together with payment of the fee prescribed by regulations, apply to the Regulator and the Regulator may grant either a TCSP Licence, or a Trust Licence, or a Service Licence (as the case may be) under section 25.
- (2) The application must be accompanied by a business plan which meets the following:
 - (a) corporate governance requirements;
 - (b) requirements that the ownership, control, management and general structure of the TCSP will not hinder review and supervision under this Act or regulations;

- (c) subject to section 28, the requirement that the TCSP has a physical presence in Samoa so that -
- (i) a licence (whether a TCSP Licence, or a Trust Licence, or a Service Licence) is not granted to any company incorporated in another country or having its head office or registered office in another country, unless the company notifies and designates to the Regulator in a form specified by regulations:
 - (A) a principal office in Samoa; and
 - (B) two of its officers, subject in their personal capacity to jurisdiction in Samoa, who are designated to be the authorised agents of the TCSP in Samoa;
 - (ii) a TCSP to which paragraph (c)(i) applies must, within 5 working days of any change to that requirement, notify the Regulator in a form prescribed by regulations of a change of:
 - (A) its principal office in Samoa; or

- (B) any of the officers designated pursuant to paragraph (c)(i)(B);
- (d) the requirement that it shows that the TCSP's affairs are conducted in a prudent and financially sound manner;
- (e) the requirement that the TCSP has appropriate policies, procedures and controls to ensure full compliance with anti-money laundering and the combating of the financing of terrorism requirements, including the ability to accurately detail the ultimate beneficial owners of vehicles, which it manages or administers;
- (f) the requirement that the TCSP is and remains resourced, structured and organised appropriately so that it can manage vehicles and assets it administers and in this respect the matters to be addressed (subject to any prescribed addition, alteration and amendment by regulations) are -
 - (i) policies and procedures; and
 - (ii) staff capabilities and numbers and types of appointments to vehicles which are undertaken by staff, whether in their own name or through corporate directors or other indirect appointments.

- (3) A TCSP which contravenes subsection (2)(c)(ii) is liable to a monetary sanction prescribed under section 45.

27. Particulars:

- (1) The applicant must, upon payment of prescribed fee, provide:
 - (a) any particular required of any controller, beneficial owner, director or key person;
 - (b) any information, available in Samoa or another country, required by the Authority.
- (2) The application must not to be granted unless:
 - (a) the application complies with the law;
 - (b) the business plan provides for adequate resources, infrastructure, competent staff, experience and proficiency;
 - (c) all of the beneficial owners, controllers and key persons of the TCSP are fit and proper persons;
 - (d) all criteria referred to in Part 4 are met;
 - (e) the applicant has complied with all regulatory reporting requirements applicable to it at the time of application and having regard to the application; and
 - (f) the granting of the licence (whether a TCSP Licence, or a Trust Licence or a Service Licence) will not generally prejudice Samoa.

- (3) A person who provides any false or misleading statement made to the Authority on an application commits an offence and is liable on conviction to a fine not exceeding 1000 penalty units or to imprisonment for a term not exceeding 12 months.

Division 3 - Managed TCSPs

28. Approval:

- (1) The Regulator may at the Regulator's discretion:
 - (a) upon application by a TCSP to the Regulator in a form and upon payment of a fee prescribed in regulations, approve a managing TCSP to manage the business of a managed TCSP;
 - (b) upon notification by a TCSP to the Regulator in a form and upon payment of a fee prescribed in regulations, renew such approval annually; and
 - (c) impose conditions on any such approval.
- (2) A managing TCSP approved under subsection (1):
 - (a) is responsible to the Authority for all matters which concern the Managed TCSP; and
 - (b) must, for the managed TCSP, comply with Division 2 to the satisfaction of the Regulator.

- (3) Despite subsection (2)(a), if the managing TCSP:
- (a) uses its best endeavours to obtain information, document and co-operation from the managed TCSP; and
 - (b) is unable to fulfil its responsibilities under this Act,
- the managing TCSP is (because of the failure) not liable for –
- (aa) any act, omission or default arising by reason of the failure of the managed TCSP; or
 - (bb) any offence or penalty under this Act.
- (4) For any failure with regard to the requirements of subsection (3), the Regulator may revoke the approval granted to the managing TCSP to manage the managed TCSP or take any action under section 38(2)(a) and (b) with regard to the Managed TCSP.
- (5) This section also applies as though reference to a managing TCSP were replaced by reference to a firm to the intent that:
- (a) the firm may manage the business of a managed TCSP during the continuance of the Managing Licence;
 - (b) the firm so acting need not comply with the capital requirements set out in sections 8 and 9;
 - (c) the firm must meet requirements as to insurance, which the Regulator determines, and in this respect the

provisions of section 10(2) of this Act applies and, if the insurance ceases, the firm must immediately notify the Regulator (who may attach any special terms and conditions to the Managing Licence as the Regulator deems appropriate) until the insurance is again effected;

- (d) the firm must apply to the Regulator for a Managing Licence in a form and with payment of a fee prescribed in regulations;
- (e) the firm must meet the requirements of section 26(2) as the Regulator requires;
- (f) the firm is liable similarly to a TCSP under section 26(3);
- (g) the firm must comply, or ensure that the managed TCSP complies with the provisions of sections 30 and 31 as the Regulator requires;
- (h) the firm must upon payment of the prescribed fee provide particulars and information under section 27(1) as the Regulator requires;
- (i) the approval of the application is entirely at the discretion of the Regulator who must have regard to matters set out in section 27(2) of this Act as the Regulator considers appropriate;
- (j) section 27(3) of this Act equally applies with regard to at the such application;

- (k) if the Managing Licence is granted, it must be renewed annually in a form and for a fee prescribed by regulations;
- (l) the Managing Licence may be revoked for any reason and at any time at the discretion of the Regulator upon written notice to the firm and to the managed TCSP;
- (m) despite or in addition to paragraph (l), section 38(1) shall, so far as relevant, apply to a firm with a Managing Licence, so that, if any of those provisions apply, the Authority may take any of the actions set out in paragraph (n);
- (n) the following are the actions referred to in paragraph (m) (which are in addition to the actions which the Authority may take under section 38(2) of this Act as regards the TCSP) -
 - (i) require the firm to take measures as the Authority considers necessary in relation to the TCSP's business;
 - (ii) impose conditions or further conditions, as the case may be, upon the Managing Licence and amend or revoke any condition; and
 - (iii) at the expense of the TCSP or of the firm to appoint a person to advise the firm on the proper

- conduct of the affairs of the TCSP under the operation of the Managing Licence and to prepare and provide to the Authority within three (3) months of the date of the appointment and of the extension of any appointment a report (including any recommendations); and
- (o) the Authority may, on receiving a report under paragraph (n)(iii) -
- (i) revoke the appointment made under that paragraph;
 - (ii) extend the appointment; or
 - (iii) subject to any conditions, as the Authority may impose, allow the affairs of the TCSP to be re-organized under the Managing Licence in a manner approved by the Authority.

Division 4 - Changes

29. Reporting:

- (1) A TCSP must, in writing, report to the Regulator any relevant changes:
- (a) to the TCSP; and
 - (b) to any of its shareholder controllers, other controllers, key persons or officers.

- (2) The TCSP must make this report in a form prescribed by regulations within 5 working days of any change.
- (3) A TCSP that fails to comply with subsection (1) must pay a to the Authority a monetary sanction prescribed under section 45.

Division 5 - Professional duties and conduct

30. Professional duties:

A TCSP has the following professional duties and requirements:

- (a) to have adequate written policies and procedures to ensure the professional performance of its duties;
- (b) to have documents, information, policies and procedures to meet FATF recommendations on money-laundering and terrorist finance risk for a vehicle which a TCSP may incorporate, create, administer, manage or provide services to, and therefore the TCSP must -
 - (i) record, verify and keep updated the beneficial ownership of the vehicle, as a component of its policies, procedures and controls on a customer's due diligence;
 - (ii) know the beneficial ownership of the source of funds being vested in those vehicles;

- (iii) have policies and procedures to ensure that full document is held evidencing the nature of business to be engaged in, as well as the powers of any vehicle; and
 - (iv) have policies and procedures to establish, access in a timely manner and retain document and information as to the beneficial ownership for vehicles;
- (c) to have a robust system to establish ultimate beneficial ownership information of vehicles as required by FATF so that the information can be obtained or accessed in a timely manner by any person with legal authority to do so and to use its best endeavours to obtain any information, even when reliance is placed on a third party;
- (d) to record the reason for establishing any vehicle, although the decision taken and the manner in which the decision was reached to achieve the reason need not be recorded;
- (e) to undertake a risk based approach to establish and monitor any complex structure, including accurate and timely information as to the reason for the existence of that complex structure;
- (f) to retain accurate evidence of all decisions made in the course of acting as a director or other controlling party of a vehicle;
- (g) to remain responsible for obtaining and recording beneficial information when reliance is placed on a third party by the TCSP in that respect and in any circumstances -

- (i) to ensure that contractual agreements with third parties are sufficiently robust to ensure that third parties can fulfil the obligations for obtaining and recording the information;
 - (ii) to test the abilities of those third parties to provide any sufficient information without delay and to ensure that there is a contractual requirement between the TCSP and the third party in that respect; and
 - (iii) to terminate the contract with the third party if the third party does not properly perform the contract,
- (h) to comply with the TCSP's duties under the law in all respects so as always to act in the best interests of beneficiaries or in the furtherance of a purpose and in the safeguarding of the assets of a trust;
- (i) to establish and record clear policies and procedures that ensure that the TCSP -
 - (i) acts with professional skill, care and diligence with regard to the administration of vehicles;
 - (ii) segregates assets of a vehicle from those of the TCSP; and
 - (iii) reconciles any receipt or movement of assets of a vehicle administered by a TCSP;

- (j) to establish and maintain rules for administering and holding clients' money which meet with the requirements prescribed by regulations and address -
 - (i) segregation of the clients' money from TCSP's money;
 - (ii) the requirement to hold clients' money in clearly separate and distinct accounts from any accounts of the TCSP's monies;
 - (iii) the disclosure to a client of the terms upon which that client's money is held;
 - (iv) the requirement for the money on clients' accounts to be reconciled promptly by the TCSP;
 - (v) the requirement for the payment away of clients' money to be subject to a dual signature regime; and
 - (vi) the establishment of policies, procedures and controls to prevent the inappropriate use of clients' money to settle TCSP fees and disbursements.

31. Professional conduct:

A TCSP must have the following professional conduct in the course of its business:

- (a) integri to act with integrity and fair dealing when conducting its business;
- (b) conflict of interest to ensure -
 - (i) that its policies and procedures reflect its duty to clients over those who refers those clients and to maintain the highest

- standards of ethical behaviour in order to avoid conflicts of interest so as to always act in the best interests of the client;
- (ii) that it has clearly established policies and written procedures to either avoid any conflict of interest arising or, where a conflict arises, to keep adequate records of the conflict and ensure fair treatment to its clients by disclosure of the conflict, internal rules of confidentiality, declining to act, or otherwise;
- (c) to adopt and maintain prudent standards in its interactions with clients, and further require that, among other things, a TCSP should -
- (i) ensure that, if appropriate, there is a full understanding of the duties arising under the laws relevant to the administration and affairs of clients for which it is acting in Samoa or another country in which it is carrying on business and in which the assets being managed are held;
 - (ii) ensure that all decisions taken or transactions entered into by or on behalf of clients are actioned in a timely manner appropriately authorised and handled by persons with an appropriate level of knowledge, experience and status;

- (iii) ensure that all reasonable steps are taken to ensure that it obtains sufficient information about the client in order to exercise a relevant power in a proper manner and that the power is only exercised for a proper purpose;
 - (iv) inform the client in writing of the agreed terms between the TCSP and the client, including the instructions received and the capacity and scope of discretion, if any, within which the TCSP will act for the client; and
 - (v) establish and maintain policies, procedures and controls to monitor and ensure it always has the requisite capacity and resources to provide the services agreed with its clients;
- (d) to adopt advertising and communication practices that -
- (i) do not violate local and international laws;
 - (ii) do not violate standards of prudence and fairness;
 - (iii) are clear and ethical;
 - (iv) do not contain any element that breaches the law or promotes a breach of the law; and
 - (v) as far as possible, do not place Samoa at risk of being brought into disrepute;

- (e) to enter into written terms of business, with clients for whom the TCSP has agreed to act, which should provide -
 - (i) a description of the services to be provided;
 - (ii) the fees to be charged and the basis of the calculation of those fees;
 - (iii) any exit fee and the basis upon which it is calculated;
 - (iv) the means by which complaints about the TCSP's services can be made; and
 - (v) that a TCSP's written terms of business provide that termination of a relationship be on reasonable notice, unless a good reason can be given;
- (f) to have a complaints handling mechanism so that the TCSP -
 - (i) has an effective written complaints handling mechanism which is fair and timely;
 - (ii) provides advice to clients about the TCSP's complaints handling mechanism; and
 - (iii) maintains a log of any complaints and their current status.

PART 5

RECORDS, ACCOUNTS, AUDIT AND DATA

32. Records:

- (1) A TCSP must, for its business:

- (a) maintain and keep within Samoa any books, records or documents, as accurately reflect the business of the trustee company and must retain such books, records or documents within Samoa for a period of not less than seven (7) years;
 - (b) maintain separate accounts in the books, records or documents, for each client, trust or other entity the trustee company acts for, manages or administers, as the case may be; and
 - (c) maintain those books, records or documents, as may be required by regulations.
- (2) A TCSP must:
- (a) comply with any regulations to retain accounting, financial and audit information;
 - (b) keep and maintain accounting records pursuant to regulations so that the records are (including any exempt person) -
 - (i) accessible and easy for inspection by the Authority; and
 - (ii) in a form that they provide effective information and document management pursuant to regulations;

- (c) produce financial statements in line with accounting standards applicable in Samoa and have those statements audited by an auditor registered with the Authority;
 - (d) permit and procure that the auditor's management letter and the management response be presented to the Authority;
 - (e) notify the Authority of any decision by its auditor to qualify its audit report or to raise an emphasis of a matter;
 - (f) make available without delay to the Regulator upon written request by the Regulator to the TCSP accounting records for vehicles with sufficient particularity to show and explain transactions and commitments pursuant to regulations;
 - (g) consider accounting records for vehicles;
and
 - (h) retain and maintain at its registered office up to date copies of the register of directors and of the register of shareholders or of members of each vehicle which is a company.
- (3) A TCSP shall submit to the Regulator:
- (a) a copy of its audited financial statements and of its annual report in such form as shall be prescribed from time to time by

- regulations within six (6) months immediately following the year end of the TCSP; and
- (b) a copy of its annual return at the time when it is required to be submitted to MCIL.
- (4) A TCSP which fails to comply with either of subsection (3)(a) and (3)(b) or both is liable to pay a monetary sanction prescribed under section 45.

33. Data protection:

- (1) A TCSP must:
- (a) comply with any regulations regarding data protection and confidentiality;
- (b) without limiting paragraph (a), ensure that the data is -
- (i) used fairly and lawfully;
- (ii) used for specific and lawful purposes and in a manner which is compatible with those purposes;
- (iii) adequate, relevant and not excessive;
- (iv) accurate and, if necessary, kept up to date;
- (v) kept for no longer than necessary;
- (vi) used pursuant to the rights of individuals; and

- (vii) kept secure to avoid unauthorised or unlawful use, accidental loss or damage.
 - (c) follow the data protection principles in Schedule 7.
- (2) A TCSP which fails to comply with the provisions of paragraph (a) of subsection (1)(a) commits an offence and is liable on conviction of a fine not exceeding 500 penalty units or a term of imprisonment not exceeding five (5) years, or both.

PART 6

MONITORING AND ENFORCEMENT

34. Money laundering policies:

- (1) A TCSP must:
 - (a) have policies, procedures and controls, pursuant to regulations that must -
 - (i) ensure that the business of the TCSP is protected from threats of money laundering, the financing of terrorism and other financial crime; and
 - (ii) be regularly reviewed according to evolving standards; and
 - (iii) be submitted to the Regulator when any alteration are made to such held by the Regulator within 5 working days of any alteration

being made, or within other period specified by Regulations; and

- (b) without limiting paragraph (a) -
- (i) identify, assess, and understand the money laundering and terrorist financing risks for Samoa and the TCSP sector, and apply resources aimed at ensuring those risks are mitigated effectively;
 - (ii) identify, assess and record a money laundering or financing of terrorism risk assessment relevant to their business, based on their business plans and risk profiles (for example, customer base, markets, distribution channels and products and services offered);
 - (iii) ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified; and
 - (iv) implement a suitable anti-money laundering and counter financing of terrorism programme with effective oversight over vehicles for which they act (the programme should include the

- implementation of adequate controls to mitigate any identified money laundering and terrorist financing risks);
- (c) have systems and policies, procedures and controls in place, pursuant to any regulations, to ensure that the TCSP and entities which it controls and administers do not become engaged directly or indirectly in bribery or corruption.
- (2) Without limiting subsection (1)(c), a TCSP must not:
- (a) solicit, receive or accept bribes or gifts, inducements, rewards or advantage that is likely to conflict with the TCSPs' duty to any client, to facilitate breach of the regulatory framework or to facilitate the commission of an offence under any law applicable to the TCSPs or to the person offering the bribe, gift, inducement, reward or advantage;
 - (b) be involved or offer services to corrupt persons; and
 - (c) directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business, to facilitate a breach of any law or other improper advantage.
- (3) In subsection (1)(c), "entities" includes any entities, (whether or not incorporated) offering, promising or giving a bribe, gift, inducement or

other benefit to a public official as consideration for co-operation, assistance, exercise of influence or act of omission in connection with any transaction or business relating to:

- (a) a governmental matter; or
- (b) a claim, advantage, approval or exemption that the government is entitled to bestow, whether or not the public official is willing or able to render that assistance.

(4) A TCSP must:

- (a) comply with any sanctions pursuant to regulations;
- (b) without limiting paragraph (a) -
 - (i) have adequate procedures to identify their obligations and comply with the law as regards financial sanctions and that implementation of those procedures should include the development of proportionate and adequate systems, internal controls and processes to satisfy relevant sanctions requirements and manage overlapping sanctions regimes;
 - (ii) ensure that their policies and procedures on legal sanctions are compliant and being applied in practice, that adequate resources

are allocated to monitoring sanctions compliance and that regular risk assessments and anti-money laundering and counter financing of terrorism audits are carried out to help assess the effectiveness of the policies and procedures;

- (iii) ensure that its staff possess the appropriate knowledge, competencies, awareness and understanding of relevant sanctions regimes, especially staff charged with developing and implementing systems of compliance and policies, procedures and controls; and
- (iv) inform the relevant competent authorities if it knows or suspects a client or a person with whom the TCSP has or has had business is affected by a relevant sanction.

- (5) If the TCSP fails to meet requirements of subsection (1)(a), the TCSP is liable to pay a monetary sanction prescribed under section 45.

35. Inspection:

The Authority (through the Regulator) may inspect, investigate, review and supervise a TCSP and its business pursuant to any regulations.

36. Examination of books and accounts:

- (1) A person who:
 - (a) can demonstrate, to the satisfaction of the Supreme Court, an interest under any trust under the control or management of a trustee company; and
 - (b) objects to an act or decision of the TCSP on the basis that there was some irregularity or impropriety by the TCSP in doing that act or making that decision, may apply to the Supreme Court to have the books and accounts of the TCSP examined, as relative to that act or decision.
- (2) When the Supreme Court receives an application under this section, which it believes to be *bona fide* and not frivolous or vexatious, the Supreme Court may appoint a person to examine the books and accounts of the TCSP in relation to the act or decision to which the objection is made.
- (3) If it is established on the examination under subsection (2) that there has been any irregularity or impropriety by the TCSP or by any officer or employee of the TCSP, the Supreme Court may make any order as it thinks fit.

37. Search:

- (1) This subsection applies if:
 - (a) there is reasonable ground for suspecting that an offence against this Act has been or is being committed and that evidence

of the commission of the offence is to be found at any place or craft so specified;
or

- (b) any books, records or documents that ought to have been produced under the provisions of this Act and have not been produced, are to be found in the place or craft.

- (2) If subsection (1) applies, a Judge or Registrar of the Supreme Court who is satisfied by information on oath of the Regulator or authorised person may grant a search warrant authorising the Regulator and any other person named in the warrant at any time within 30 days from the date of the warrant:

- (a) to enter the place or craft specified in the warrant or a place where a craft so specified may be; and
- (b) to search the place or craft.

- (3) The person authorised by the warrant to search a place or craft may:

- (a) search any person who is found in or whom the person has reasonable grounds to believe to have recently left or to be about to enter place or craft; and
- (b) seize any books, records or documents found in the possession of that person or in place or craft which the person has reasonable grounds for believing ought to have been produced under the provisions of this Act.

- (4) A person who has power to enter any place or craft, may use reasonable force necessary for the purpose of exercising that power.
- (5) A search warrant must be exercised by day, unless the warrant expressly authorises the execution of it by night.
- (6) A person executing any search warrant must have it with them and produce it if required to do so.
- (7) A person who obstructs the Regulator or any other person in the exercise of any powers conferred on the Regulator or other authorised person in this section commits an offence and is liable upon conviction to a fine not exceeding 200 penalty units or to imprisonment for a term not exceeding six (6) months.
- (8) The Commissioner of Police must provide the Regulator or authorised person with any assistance as the Regulator or authorised person requests concerning the exercise of the Regulator's or authorised person's powers under this section.
- (9) In this section:
 - "place" includes any premises, building or other structure;
 - "craft" means any vessel, ship, boat, aircraft or motorised vehicle.

38. Other actions:

- (1) This section applies if a TCSP, or a nominated company which has received the approval of the Regulator under section 17 of this Act:
 - (a) is carrying on business in a manner detrimental to the public interest, to the interest of its clients or creditors; or
 - (b) is or appears likely to become unable to meet its obligations as they fall due; or
 - (c) has failed to comply with the terms and conditions of its TCSP Licence, or Trust Licence, or Service Licence ; or
 - (d) has failed to comply with a direction or code; or
 - (e) has contravened this Act, the Money Laundering Prevention Act 2007 or any other law; or
 - (f) is owned, controlled, managed or directed by a person who is not a fit and proper person to have an interest in or to be concerned with the management of a TCSP.
- (2) If subsection (1) applies, the Authority may, take any one or more of the following actions:
 - (a) require the TCSP to take such measures, as the Authority considers necessary in relation to the TCSP's business;
 - (b) impose conditions or further conditions, as the case may be, upon the TCSP Licence, or the Trust Licence, or the

- Service Licence and, amend or revoke the condition;
- (c) require the removal or replacement of any controller, director, officer or manager of the TCSP;
 - (d) at the expense of the TCSP, appoint a person to advise the TCSP on the proper conduct of its affairs and report it to the Authority within three (3) months of the date of the appointment;
 - (e) at the expense of the TCSP, appoint a person to assume control of the TCSP's affairs with the powers (subject to necessary changes) of a receiver or manager of a business under the Companies Act 2001;
 - (f) present a petition to the Supreme Court for the winding-up of the TCSP;
 - (g) revoke the TCSP Licence, or Trust Licence, or Service Licence or Managing Licence.
- (3) A person appointed under subsection (2)(d) or (e), or whose appointment has been extended under subsection (4)(b), must, within three (3) months of the date of the appointment or of the extension of the appointment, prepare and provide to the Authority a report (including any recommendations) of the affairs of the TCSP.
- (4) The Authority may, on receiving the report under subsection (3):

- (a) revoke the appointment under subsection (2)(d) or (e); or
- (b) extend the period of the person's appointment; or
- (c) subject to any conditions, as the Authority may impose, allow the TCSP to re-organise its affairs in a manner approved by the Authority; or
- (d) revoke the TCSP Licence, or the Trust Licence, or the Service Licence or the Managing Licence (as the case may be).

39. Revocation of licence:

- (1) Authority may revoke a TCSP Licence, a Trust Licence or a Service Licence or a Managing Licence (as the case may be) if the TCSP:
 - (a) has ceased to carry on trustee business or other financial services business or does not within six (6) months after the issuance of its TCSP Licence, Trust Licence or Service Licence (as the case may be) commence trust business or other financial services business; or
 - (b) goes into liquidation or is wound-up or dissolved.
- (2) The Authority must:
 - (a) in writing, notify the TCSP; and
 - (b) through means, as the Authority deems fit, notify any creditor, client, shareholder or employee of the TCSP and relevant

regulatory authorities in another country of a revocation of the TCSP Licence, the Trust Licence or the Service Licence (as the case may be).

40. Winding-up:

- (1) This section applies if a TCSP or a trustee company which has at any time been a TCSP is being wound-up voluntarily.
- (2) If this section applies, the Authority may apply to the Supreme Court if the Authority considers that the winding-up is not being conducted in the best interest of its clients or other creditors.
- (3) The Supreme Court may make any order as it considers fit.

41. Appeals:

- (1) Subject to paragraph (b), a person affected adversely may, within 21 days of the date of the decision appeal to the Supreme Court, that decision:
 - (a) to revoke a TCSP Licence, Trust Licence or Service Licence (as the case may be) under section 39; or
 - (b) by the Authority to take any action under section 34.
- (2) An appeal may be brought under this section only on any of the following grounds that the decision was:
 - (a) *ultra vires*; or

- (b) an unreasonable exercise of the Authority's powers.
- (3) Filing of an appeal does not act as a stay of execution of the decision appealed.
- (4) A person affected adversely may, upon notice to the Authority, apply to the Supreme Court for leave to extend the time within which the notice of appeal is to be filed.
- (5) The Supreme Court may, upon hearing the extension application, extend the 21 days to file the appeal.
- (6) In hearing and determining any appeal, the Supreme Court may:
 - (a) exercise any of the powers conferred on the Authority by this Part; or
 - (b) cancel or amend any decision to which the appeal relates; or
 - (c) confirm the decision;
 - (d) make an order as it thinks fit.
- (7) No award of damages or costs is to be made against the Authority, the Regulator or the Government on an appeal.

PART 7

INFORMATION AND OTHER FORMS OF CO-OPERATION

42. Information Sharing:

- (1) Subject to the conditions set out in subsection (2) and to the requirements set out in subsection (3),

the Regulator has power to provide information concerning a TCSP to a foreign regulator or to a foreign or domestic supervisory authority or to a foreign or domestic agency responsible for the prevention or suppression of terrorism or for the prevention of money-laundering (together or severally "Recipient") who make enquiries of the Regulator in the discharge of their supervisory functions and exercise of their powers, including for the purpose of day to day supervision, investigations, enquiries and enforcement.

- (2) The conditions referred to in subsection (1) are as follows:
 - (a) the disclosure is necessary for the effective regulation of the TCSP; or
 - (b) having regard to the affairs of the TCSP or of a customer of the TCSP, the TCSP or the customer has voluntarily provided authority to the Regulator for the disclosure of the information; or
 - (c) the information is already in the public domain; or
 - (d) the Regulator believes that a suspicious transaction was not reported under the Money Laundering Prevention Act 2007 of Samoa; or
 - (e) the Regulator believes that a transaction may be associated with an offence under the Counter Terrorism Act 2014 of Samoa.

- (3) The requirements referred to in subsection (1) of this section are as follows:
 - (a) the Regulator is satisfied that the intended Recipient is subject to adequate legal restrictions or disclosures which shall include the provision of an appropriate undertaking on confidentiality; and
 - (b) the information is required for the purposes of TCSP supervision or the prevention or suppression of terrorism or the enforcement of the prevention of money-laundering.
- (4) The Regulator may impose conditions on the use of the information by the Recipient which may include limiting the use of the information by the Recipient.
- (5) The Regulator has power and authority to enter into information sharing mechanisms, including Memorandum of Understanding's with a Recipient to be implemented on a timely and constructive basis.

43. Other forms of co-operation:

- (1) The Regulator has power and authority at its discretion to provide assistance to a Recipient on request from a Recipient.
- (2) The Regulator has the power and authority at its discretion to permit the Recipient to conduct an onsite inspection by Recipient in Samoa of a

TCSP, which is regulated there by the Regulator and which is also regulated by the Recipient.

- (3) The Regulator has power and authority to collaborate with any Recipient in the exercise of its functions in the case of suspected or actual criminal activities by a TCSP and the existence of a Memorandum of Understanding is not a prerequisite for such collaboration.

PART 8

MISCELLANEOUS

44. Taxation:

A TCSP is subject to the general laws of Samoa imposing income tax, goods and services tax, stamp duty or other taxes, imposts or deductions of any kind whatsoever.

45. Monetary sanctions:

Regulations may be made for monetary sanctions to be imposed by the regulator for non-compliance with this Act.

46. Statistics:

The Regulator may at any time require a TCSP to provide the Regulator, without any breach of confidentiality on the part of the TCSP, statistics as to the number of trusts of any particular type of which the TCSP is at that time acting as trustee.

47. Immunity:

No action shall lie against the government or any statutory body or authority of Samoa, including the Authority, the Regulator, any deputy of the Regulator or other officer, the Minister, the Authority or any person acting pursuant to any authority conferred by the Authority or the Regulator, as the case may be, in respect of any act or matter done or omitted to be done in good faith in the exercise or purported exercise of their respective functions conferred by or under this Act or any regulations made under this Act.

48. Procedure where none laid down:

If an act or step is required or permitted to be done under this Act, and no form is prescribed or procedure laid down in this Act or in regulations for doing the same, application may be made to the Regulator for directions as to the manner in which the same may be done and by act or step done in accordance with the directions of the Regulator shall be a valid performance of such step or act.

49. Regulations:

The Head of State may, acting on the advice of Cabinet, make regulations to give effect to or for the purposes of this Act.

50. Repeal:

The Trustee Companies Act 1988 is repealed.

51. Transition and saving:

- (1) For the purposes of this section, the following expressions have the following meanings:
- “Application for Continuance” means an application to be submitted in a form specified by regulations by an Existing TCSP to the Regulator to apply for a Licence of Choice;
- “Choice Date” means 1st August 2018;
- “Day 1” means 31st December 2017;
- “Day 2” means 31st January 2018;
- “Day 3” means 31st March 2018;
- “Day 4” means 31st May 2018;
- “Day 5” means 31st July 2018;
- “Day 6” means 31st December 2018 or such other date as the Regulator may by notice in writing in a form specified by regulations to the Existing TCSP direct;
- “Existing Accounting Basis” means the basis of accounting adopted by an Existing TCSP for the purposes of calculating that Existing TCSP’s Existing Licence fee;
- “Existing Licence” means the licence granted to a trustee company under the Trustee Companies Act 1988 immediately before the commencement date of this Act;
- “Existing TCSP” means a trustee company holding an Existing Licence;

“Insurance Requirement” means the requirements of the Regulator of a TCSP to effect a policy of insurance in accordance with section 10 of this Act;

“Licence of Choice” means any one or more of the licences referred to in section 25 of this Act;

“New Accounting Date” means 1st August 2018 and each subsequent anniversary thereof;

“New Accounting Basis” means the last audited accounts of the Existing TCSP prior to the New Licensing Date;

“New Licensing Date” means 1st August 2018 and each subsequent anniversary of that date; and

“Present Licensing Date” means the date on which the annual fee for the Existing Licence is payable.

- (2) Before the end of Day 1, the Regulator will write to each Existing TCSP telling it the options available for licences under this Act and with regard to matters relating to fees, capitalization and insurance relating to it so that each Existing TCSP may decide upon a Licence of Choice.
- (3) Each Existing TCSP will, if it wishes to continue with its Existing Licence, renew the Existing Licence on the Present Licensing Date first occurring on or after 1st January 2018 and on or before Day 5 by paying the licence fee then due on the Existing Accounting Basis but

apportioned to the New Licence Date complying with all requirements having regard to the Existing Licence which shall then continue until the issue to the Existing TCSP of the Licence of Choice.

- (4) Each Existing TCSP will inform the Regulator in writing before the end of Day 2 of the Licence of Choice which it wishes to continue with from the first New Licensing Date.
- (5) Before the end of Day 3, the Regulator will send to each Existing TCSP an Application and Continuance setting out existing information relating to the Existing TCSP and stating what of such information it requires confirmed in writing by the Existing TCSP to the Regulator and setting out what other due diligence or information or documentation the Regulator will require from the Existing TCSP for the Application for Continuance, including details of the capitalization of the Existing TCSP required from the New Licensing Date.
- (6) Before the end of Day 4, each Existing TCSP must provide the Regulator with the completed Application for Continuance signed by a director or authorized signatory of the TCSP or by the resident agent on its behalf with the written confirmation requested and with all due diligence or information or documentation required.

- (7) As soon as possible after the Existing TCSP has complied with the requirements of subsection (6), the Regulator shall inform the Existing TCSP in writing of the Insurance Requirement for the Existing TCSP with regard to the Licence of Choice, which the Existing TCSP must confirm in writing to the Regulator to be in place, with such evidence as the Regulator may require, not late than the end of Day 6.
- (8) The Regulator and the Existing TCSP shall do everything necessary to ensure that all matters concerning the Application for Continuance are properly finalized before the end of Day 5.
- (9) If any matter is not finalized before the end of Day 5 and in the view of the Regulator this is the fault of the Existing TCSP, the Regulator must notify the Existing TCSP of the fault and require the Existing TCSP to rectify the fault within a stated period of time as the Regulator considers reasonable and, if such fault is not rectified within the stated period of time, the Regulator may revoke the Existing Licence and refuse to grant the Application for Continuance and refuse to grant the Licence of Choice.
- (10) When the Application for Continuance is fully completed to the satisfaction of the Regulator, the Regulator must notify the Existing TCSP in writing of the completion of the Application for Continuance:

- (a) stating the annual renewal fee then payable for the Licence of Choice, which if appropriate is calculated in accordance with subsection (11), and is to be calculated on the New Accounting Basis, for the year commencing on the New Licensing Date and ending on 31st July 2019;
 - (b) confirming the capitalization required for the Existing TCSP with effect from the New Accounting Date; and
 - (c) confirming the Insurance Requirement for the TCSP in respect of the Licence of Choice referred to in subsection (7).
- (11) If the Present Licensing Date of the Existing TCSP is after Day 5 and before 1st January 2019, these must be set off against the annual renewal fee for the Licence of Choice, referred to in subsection (10), that part of the Present Licence fee calculated on the Existing Accounting Basis, which has been paid by the Existing TCSP from the period from the Present Licensing Date of the Existing TCSP up to and including 31st December 2018.
- (12) When the Regulator has notified the Existing TCSP in writing of the completion of the Application for Continuance and the Existing TCSP has fully paid the appropriate licence fee for the Licence of Choice, the Regulator must issue to the Existing TCSP the Licence of Choice and must cancel the Existing Licence.

- (13) From 1st August 2019 and subsequent anniversaries of that date, each Existing TCSP, having a Licence of Choice, will pay annual renewal fees in advance calculated on the New Accounting Basis.

52. Consequential amendments:

In the Segregated Fund International Companies Act 2000 for section 2, in its correct alphabetical position, insert:

““beneficial owner” has the same meaning as provided in the Trustees Companies Act 2017.”.

SCHEDULE 1*(Section 2)***PART 1 - CONNECTED PERSONS**

- (1) For an individual, means a person listed in Part 2.
- (2) For a firm, means another firm in which the first mentioned firm has control of not less than 20% of the voting power in that other firm.
- (3) For a corporation, means:
 - (a) an employee or former employee of the corporation;
 - (b) a director or former director of the corporation;
or
 - (c) another corporation in which the first-mentioned corporation or a person mentioned in paragraph (a) or (b), has, in aggregate, control of not less than 20% of the voting power in that other corporation.
- (4) Reference to a person connected to another person is to be construed accordingly.

**PART 2 - CONNECTED PERSONS TO AN
INDIVIDUAL**

- (1) The following persons constitute connected persons to an individual for the purposes of this Act:
 - (a) spouse;
 - (b) the descendants of the individual and of the spouse of the individual;

- (c) parents, including step-parents;
 - (d) grandparents;
 - (e) *parents-in-law, including step-parents-in-law*;
 - (f) brother, step-brother, sister, step-sister and their spouse and children;
 - (g) spouse's grandparents;
 - (h) spouse's brother, step-brother, sister, step-sister and their spouses and children;
 - (i) parent's brother, step-brother, sister, step-sister and their spouses; and
 - (j) children of the individual's brother, step-brother, sister or step-sister, both present and future, including step-children and their spouses.
- (2) A relationship listed in subclause (1) that may be established by blood includes a relationship established by adoption.
- (3) In this Schedule:
"children" includes step-children;
"descendants of an individual" means that individual's children ("children-A"), children-A's children ("children-B"), children-B's children, and so on.

SCHEDULE 2

(Sections 2 and 26)

MATTERS CONSTITUTING CORPORATE GOVERNANCE REQUIREMENTS

- (1) An approval process for the direction and management of a TCSP which requires that:

- (a) the board collectively comprises an appropriate balance of skills, knowledge and competence taking into account its members' relevant experience such that the board as a whole is able to discharge its duties and responsibilities effectively, and further that an individual or group of individuals cannot or does not unduly dominate the board's decision making;
- (b) if functions have been delegated by the board, the board clearly and comprehensively records the functions delegated and ultimate responsibility for the delegated functions remains with the board;
- (c) the management structure should be appropriate to the size, complexity, structure and risk profile of an individual TCSP;
- (d) the board has a minimum of 2 individuals to direct the business and who are sufficiently independent of each other such that each would not be unduly influenced by another board member;
- (e) directors are aware of and understand their duty to understand applicable legislation, regulation, policy, rules, instructions, guidance and codes of practice to an appropriate level to enable them to discharge their responsibilities;
- (f) the board comprises individuals that are aware of and understand the Board's collective duty to ensure that robust arrangements for compliance with the regulatory regime are maintained;

- (g) the board establishes, implements, documents and maintains an effective conflicts of interest policy for both the board and the TCSP, which sets out the standards of expected behaviour including, amongst other matters, the treatment of any non-compliance with the policy;
 - (h) the board ensures that it formulates and implements a suitable risk framework for the TCSP, including the production of a statement of risk appetite so that the types of business the board is prepared to take on and risk tolerance are clear;
 - (i) the board undertakes a periodic self-assessment of their effectiveness.
- (2) The board retains ultimate responsibility for the compliance function, and must ensure:
 - (a) that it approves and regularly reviews a compliance policy and establishes a defined and resourced compliance function;
 - (b) there is periodic verification of compliance with established applicable standards;
 - (c) there is periodic verification of compliance with all regulatory and other legal requirements;
 - (d) that necessary remedial actions to rectify any shortcomings in the TCSP's operations are taken promptly; and
 - (e) that there are regular reports on the performance of the TCSP's compliance function.
- (3) In assessing the quality and strength of a board, the Regulator has the power to amend the composition and size of the board.

- (4) The Regulator must not permit a corporate director to be on the board.

SCHEDULE 3

(Sections 2 and 33)

EXEMPT PERSONS

- (1) A private trustee company.
- (2) A law firm having regard to:
- (a) the provision of services in relation to the creation of an express trust;
 - (b) the arrangement for any person to act as trustee of an express trust;
 - (c) the provision of trust administration services which are procedural and non-discretionary or which relate to the drafting of legal document and the giving of legal advice in connection with that document; or
 - (d) the carrying on of business as trustee of express trusts (similar to a trustee company) if the following conditions are complied with -
 - (i) the total amount of financial assets, excluding real property, settled by any one person into one or more trusts does not exceed \$2,000,000 (or the equivalent in any other currency); and
 - (ii) the total aggregate number of persons and of trusts for which any one law firm acts at any time does not exceed 30; and

- (iii) the overall value of assets being part of that law firm's business as trustee of express trusts does not exceed \$30,000,000; and
- (iv) despite paragraphs (i) to (iii), the law firm may apply in writing to the Regulator on a form and subject to the payment of a fee prescribed by regulations to vary all or any one or more of the limitations set out in paragraphs (i) to (iii) and such variation shall be at the total discretion of the Regulator; and
- (v) the law firm effects a policy of insurance with an insurance company approved by the Regulator covering claims for liabilities incurred by reason of the carrying on of the law firm's business as trustee of express trusts or any of the partners, lawyers, employees or agents of the law firm in that respect in an amount and in such terms as the Regulator considers fit; and
- (vi) if the insurance is cancelled or not renewed, to immediately notify the Regulator in writing;
- (vii) within three (3) months of the commencement of this Act or within one (1) month of the commencement of

carrying on business within this paragraph to notify the Regulator in writing; and

- (viii) to cause the auditors of the law firm to provide a certificate to the Regulator in such form as may be prescribed from time to time by regulations that the law firm is compliant with the paragraphs (i), (ii) and (iii) within six (6) months of the end of each accounting year of the firm and otherwise within such reasonable time as the Regulator may at any time require by written notice to the law firm, and any law firm, which shall be in breach of any of the provisions and requirements of this clause, is liable to a monetary sanction prescribed under section 45.

- (3) An accounting firm having regard to similar matters and upon similar terms and subject to similar requirements to those relating to a law firm set out in paragraph (2), including liability for breach of such provisions and requirements.
- (4) An overseas person, in respect of:
 - (a) the provision of services in relation to the creation of an express trust; or
 - (b) the arrangement for any person to act as a trustee in respect of an express trust,where the carrying on of that activity is effected under an arrangement between the overseas person and -
 - (i) a trustee company; or
 - (ii) an exempt person.

- (5) A person in respect of:
- (a) services to create an express trust; or
 - (b) the arrangement for any person to act as a trustee of an express trust,
- where the carrying on of such activity is affected between the person and a trustee company.
- (6) Any other person who is granted exemption as an exempt person by any regulations.
- (7) A private trustee company must engage a trustee with either a Trust Licence or a TCSP Licence to carry out trust administration services for the purposes of conducting the necessary checks to comply with any direction issued by the Authority on the prevention of money laundering or countering the financing of terrorism.
- (8) A private trustee company which contravenes sub-clause (7) is liable to a monetary sanction prescribed by regulations.

SCHEDULE 4

(Sections 2, 9, 10, 27 and 38)

FIT AND PROPER PERSONS

Part 1: Controller of TCSP

1. Standards

The fit and proper standards are:

- (a) a controller of a TCSP must be, and must remain, a fit and proper person;

- (b) the TCSP must provide the Regulator with any document and information as the Regulator may require with regard to any debt, option, equity or beneficial interest holding in the TCSPs which would make the holder of that interest a shareholder controller;
- (c) the TCSP must obtain the prior approval of the Regulator as specified in sub-clause (d) for the appointment of, or change in, a controller, a shareholder and a director;
- (d) an application to the Regulator referred to in clauses 1(c), (e) and (h) of Part 1 of this Schedule shall be made in such form and accompanied by the payment of such fee and by such due diligence and other information as prescribed in regulations
- (e) if a controller exercises a key person function within the TCSP, a separate approval of the Regulator as specified in sub-clause (d) of this clause is required by the TCSP specific to that role;
- (f) the Regulator may refuse to approve or may remove any existing controller;
- (g) if a controller is associated with a jurisdiction that is assessed as higher risk by the Regulator, the TCSP must demonstrate to the Regulator, as the Regulator may require, that it can manage any risks arising;
- (h) the TCSP must obtain the prior approval of the Regulator as specified in sub-clause (d) with regard to the issue of any share in the TCSP.

2. Integrity:

A controller must act with integrity.

3. Competence:

A controller who exerts an influence over the day to day affairs of a TCSP must be competent to do so.

4. Financial soundness:

- (1) If the TCSP is part of a group, the Regulator:
 - (a) must assess the financial strength of the group insofar as it may impact the TCSP;
 - (b) may require and the TCSP must provide copies of the parent company's financial statements and other relevant information, which the Regulator may ask for.
- (2) The Regulator must assess the solvency of controllers and the impact on the TCSP if a controller has been or is likely to be declared bankrupt or insolvent or has been the subject of a money judgment and the TCSP must provide the Regulator with any information as the Regulator may require to make that assessment.
- (3) The Regulator must require a controller to demonstrate clearly the controller's sources of wealth or fund and the TCSP must ensure that the shareholder controller provides any information it, as the Regulator may require.

5. Conflicts of interest:

The Regulator must:

- (a) assess whether a controller has any existing or potential conflicts of interest; and
- (b) if there is any conflicts, ensure that they are addressed appropriately.

Part 2: Key persons

- (1) The prior written approval of the Regulator to an application by the TCSP on such form and subject to the payment of such fee from time to time be prescribed in regulations is required for the appointment of a key person.
- (2) The Regulator must:
 - (a) when considering the approval, assess the fit and proper standards for the appointment of a key person;
 - (b) require that a key person of a TCSP continues to be a fit and proper person throughout the period that the person performs the role of a key person, andthe TCSP must provide the Regulator with any document and information, as the Regulator may require to carry out the assessment.
- (3) The Regulator may refuse approval to or remove a person from a key person role.
- (4) In making a fit and proper determination, the Regulator must consider integrity, competence and financial soundness.

- (5) In assessing whether or not to approve the appointment or continuance of a person as a key person, the Regulator must have regard to the outcome of the following checks for that person:
- (a) any civil action or conviction of an offence;
 - (b) regulatory sanctions;
 - (c) professional reprimands;
 - (d) other formal censure, discipline or public criticism;
 - (e) refusal of the right to carry on a trade, business or profession for which a specific licence, registration or other authority is required;
 - (f) refusal of entry to a trade organisation;
 - (g) declaration of bankruptcy (or similar);
 - (h) whether the person is subject to any investigation personally or in relation to any associated corporation;
 - (i) professional or other relevant qualifications; and
 - (j) knowledge or experience relevant to the business concerned.

Part 3: Officer and other employees

- (1) The Regulator must:
- (a) require a TCSP to implement controls for the recruitment and ongoing assessment of employees; and
 - (b) require that the TCSP -
 - (i) has recruitment procedures to ensure it employs employees who are competent to perform their roles;

- (ii) appropriately supervises its employees;
 - (iii) regularly reviews the competence of its employees, and that the level of competence is appropriate to the nature and size of the business; and
 - (iv) ensures all employees remain competent for the role they undertake by undertaking appropriate training or professional development.
- (2) The Regulator must:
 - (a) require TCSPs to have procedures in place to control recruitment practices in regard to all individuals including key persons;
 - (b) require the TCSP to, prior to hiring an employee, give due consideration to an applicant's -
 - (i) conviction of an offence;
 - (ii) regulatory censure;
 - (iii) professional reprimands; and
 - (iv) other formal censure, discipline or public criticism.
- (3) The Regulator must require that a TCSP establishes and implements policies and procedures that require its employees, including key persons, to undertake an annual programme of training and professional development.

SCHEDULE 5*(Section 2)***CODES**

The Authority may make codes concerning one or more of the following:

- (a) the conduct of any business carried on by TCSPs;
- (b) “know your customer” and customer due diligence procedures;
- (c) client agreements and terms of business;
- (d) key staff and management of a TCSP;
- (e) the financial resources of trustee companies;
- (f) the making of returns, reporting requirements and the form and content of any information required to be produced by TCSPs to the Regulator for regulatory purposes;
- (g) matters to be notified to the Regulator or the Authority, as the case may be;
- (h) books and records required to be maintained by trustee companies;
- (i) avoidance of conflicts of interest;
- (j) advertising by trustee companies;
- (k) professional indemnity insurance cover;
- (l) arrangements for the settlement of disputes and handling of complaints; and
- (m) such other matters as the Authority deems necessary to set out the procedures to be followed by, and the conduct expected of, a TCSP in the

operation of its business, whether this is trust business and/or other financial services business.

SCHEDULE 6

(Sections 3)

DUTIES OF THE REGULATOR

The Regulator must:

- (a) supervise and regulate TCSPs pursuant to this Act; and
- (b) maintain a general review of the activities of TCSPs, including the maintenance of adequate policies and procedures for “know your customer” and anti-money laundering; and
- (c) if the Regulator thinks fit -
 - (i) conduct on-site examinations and off-site supervision, by way of the receipt of regular returns or in any other manner as the Regulator thinks necessary, of the affairs or business of a TCSP for the purpose of satisfying the Regulator that:
 - (A) this Act, the International Companies Act 1988, the Money Laundering Prevention Act 2007, the Trusts Act 2014, the Foundations Act 2016 and any other law regarding financial services business are being complied with; and
 - (B) the TCSP is in a sound financial position; and

- (ii) report to the Authority the results of the examination; and
- (d) assist in the investigation of an offence against the law which the Regulator has reasonable grounds to believe has or may have been committed by a TCSP or by any of its directors or officers in their capacity as such; and
- (e) examine audited annual accounts, statements and returns maintained under any code and to report them to the Authority if the Regulator thinks fit.

SCHEDULE 7

(Section 33(1)(c))

PRINCIPLES FOR DATA PROTECTION

The following principles apply to a TCSP for data protection:

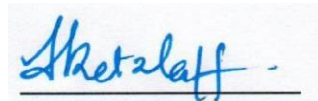
- (a) not to transfer data to another jurisdiction unless that jurisdiction adheres to similar requirements to those set out in section 33 or an agreement exists between the TCSP and the transferee providing an equivalent level of protection;
- (b) to record the capability and suitability of the proposed provider of outsourced services;
- (c) to establish a clear responsibility within the TCSP for monitoring the conduct of the outsourced services and for reporting to its board;
- (d) to consider the risks which could arise from failure of the provider of outsourced services or other breakdown of the services;

- (e) to have in place a contingency plan if there is failure of the provider of outsourced services or other breakdown in the services;
- (f) any other principle prescribed by regulations.

REVISION NOTES 2017

This is the official version of this Ordinance as at 31 December 2017.

This Act has been revised in 2017 by the Chief Legislative Drafter Galumalemana Noumea L. Teueli under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

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