



SAMOA

SAMOA TRUST ESTATES CORPORATION ACT 1977

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SAMOA TRUST ESTATES CORPORATION ACT 1977
1977 **No. 16**

AN ACT to consolidate and amend the law relating to the Samoa Trust Estates Corporation.

[Assent and commencement date: 20 December 1977]

PART 1
PRELIMINARY

1. Short title – This Act may be cited as the Samoa Trust Estates Corporation Act 1977.

2. Interpretation – In this Act, unless the context otherwise requires:

“Board” or “Board of Directors” means the Board of Directors of the Corporation;

“Chief Executive Officer of Agriculture” means the Chief Executive Officer of Agriculture and includes any officer or employee of the Ministry of Agriculture delegated by him or her in writing to exercise the authority conferred by this Act on the Chief Executive Officer of Agriculture;

“Corporation” means the Samoa Trust Estates Corporation;

“Director” means a Director of the Corporation;

“General Manager” means the General Manager of the Corporation appointed under section 20;

“Year” or “financial year” means a year commencing on 1 January and ending on 31 December.

PART 2
CONSTITUTION OF CORPORATION

3. Continuation of the Corporation – (1) There shall continue to be the body corporate called the Samoa Trust Estates Corporation which shall be the successor to the Corporation, of the same name, established under the Samoa Amendment Act (No.2) 1956 (N.Z.) and continued under the Samoa Trust Estates Corporation Ordinance 1961.

(2) The Board of the Corporation comprises 7 directors who are to be selected in accordance with applicable law relating to the management of public bodies.

(2A) Cabinet shall appoint 1 of the directors to be Chairperson, and may appoint a Deputy Chairperson.

(2B) No person may be appointed or continue to hold office as a director, while that person is a full-time salaried officer or employee of the Corporation.

(2C) Unless the Board decides otherwise, the General Manager must attend all Board meetings but has no voting rights.

(3) The Corporation is a body corporate with perpetual succession and a common seal, and has power and is capable of acquiring, holding, and disposing of real and personal property, of suing and being sued, of borrowing money on the security of its assets or otherwise, and of doing and suffering other acts and things that bodies corporate may lawfully do and suffer.

(4) The powers of the Corporation shall not be affected by any vacancy in its membership.

4. Assets and liabilities of the Corporation – (1) All property both real and personal, and all contracts, rights of action and other rights which were vested in the Corporation immediately before the coming into force of this Act shall continue to be vested in the Corporation on the coming into force of this Act.

(2) All debts, liabilities and obligations of the Corporation immediately before the coming into force of this Act shall continue to be debts, liabilities and obligations of the Corporation on the coming into force of this Act.

(3) If any question arises as to whether any property, right, debt, liability, or obligation has become or is the property, right, debt, liability, or obligation of the Corporation, that question shall be decided by the Head of State, acting on the advice of Cabinet, and the Head of State's decision shall be final.

5. Appointment of directors – (1) The Board comprises of not less than three (3) and not more than five (5) directors who are appointed by the Head of State on the advice of Cabinet in accordance with law and approved Government policy relating to the management of public bodies.

(2)*(Repealed by Act 2012, No.15).*

(3) A director, unless he or she sooner vacates his or her office under section 6, continues to hold his or her office until his

or her successor comes into office, even if the term for which he or she was appointed may have expired.

(4) The directors in office on the coming into force of this Act are deemed to have been appointed under this Act.

6. Extraordinary vacancies— (1) and (2) (*repealed by Act 2012, No.15*)

(3) If any director dies, resigns, or is removed from office, the Head of State, acting on the advice of Cabinet, shall appoint a person to be a director for the residue of the term for which the vacating director was appointed.

7. Deputy directors – (1) Where any director is temporarily incapacitated by illness, absence, or other sufficient cause from performing the duties of his or her office, the Head of State, acting on the advice of Cabinet, may appoint a deputy to act for that director during his or her incapacity.

(2) A deputy is, while he or she acts as such, deemed to be a director.

(3) No appointment of any deputy and no acts done by him or her as such shall in any proceedings be questioned on the ground that the occasion for his or her appointment had not arisen or had ceased.

8. (*Repealed by Act 2012, No.15*)

9. Remuneration of directors – (1) There shall be paid to each director remuneration at such rates as Cabinet may determine.

(2) A director shall be paid travelling expenses reasonably incurred by him or her in the performance of his or her duties at such rates as may be determined by Cabinet.

(3) All payments made under this section shall be paid out of the funds of the Corporation.

10. Liability of directors – No director is personally liable for an act done or omitted to be done in good faith in the exercise of the functions, powers, and authorities of the Corporation or for any debt or other liability lawfully incurred by the Corporation.

PART 3

FUNCTIONS AND POWERS OF CORPORATION

11. Functions of the Corporation – The functions of the Corporation shall be:

- (a) to control, manage, and develop as trustee for and on behalf of the people of Samoa—
 - (i) the assets of the Corporation vested in it and referred to in section 4; and
 - (ii) any other assets that the Corporation may have acquired or may acquire, whether real or personal, and
- (b) to ensure the efficient and prudent agricultural, horticultural, pastoral, industrial, commercial or other development of its lands, assets and other enterprises; and
- (c) from 1 September 1990 to carry on the operations of the Corporation with a view to the privatisation of its enterprise by disposal or otherwise:

PROVIDED THAT nothing in this section prevents:

- (a) the holding of any lands as reserves for any purposes consistent with the functions of the Corporation;
or
- (b) the dedication of any lands by the Corporation for any public purpose as defined in the Taking of Land Act 1964.

12. Powers of the Corporation – (1) The Corporation shall have all the powers and authorities necessary for the effective performance of its functions.

(2) Without limiting subsection (1), the Corporation shall have the following specific powers:

- (a) to cultivate the lands of the Corporation and develop the resources of the same and sell or otherwise make use of the produce and livestock therefrom;
- (b) to carry on all or any of the trades or businesses of general merchants, exporters and importers, wholesalers and retailers, garage proprietors and engineers, ship owners, wharf owners and wharfingers, warehousemen, manufacturers, builders, timber millers, fishermen, fish curers,

canners, dealers in livestock, indent agents, farmers, planters, agents, hoteliers, transport operators, carriers of goods and passengers, and buyers and sellers of and dealers in merchandise and produce of all descriptions;

- (c) to carry on any other business whatsoever which may seem to the Corporation capable of being conveniently carried on in connection with any of its businesses or calculated directly or indirectly to enhance the value of or render profitable any of the Corporation's property or rights;
- (d) to acquire and undertake the whole or any part of the business, property and liabilities of any person or company carrying on any business which the Corporation is authorised to carry on, or possessed of property suitable for the purposes of the Corporation;
- (e) to apply for, purchase, or otherwise acquire any patents, patent rights, copyrights, trademarks, formulas, licences, concessions, and the like, conferring any exclusive or non-exclusive or limited right to use, or any secret or other information as to, any invention which may seem capable of being used for any of the purposes of the Corporation, or the acquisition of which may seem calculated directly or indirectly to benefit the Corporation; and to use, exercise, develop, or grant licences in respect of, or otherwise turn to account, the property, rights, or information so acquired;
- (f) to enter into partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint adventure, reciprocal concession, or otherwise, with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction which the Corporation is authorised to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the Corporation;

- (g) to take, or otherwise acquire, and hold, shares, debentures or other securities of any company;
- (h) to enter into any arrangements with the Government or any other authority that may seem conducive to the Corporation's objects, or any of them; and to obtain from the Government or authority any rights, privileges, and concessions which the Corporation may think it desirable to obtain; and to carry out, exercise, and comply with any such arrangements, rights, privileges, and concessions;
- (i) to establish or participate in any provident, superannuation, pension, insurance or other scheme of a like nature, which has as its object the provision of provident or retirement funds or pensions or retirement allowances for persons in or formerly in the service of the Corporation, or the dependants or connections of any of such persons; and, as employing authority under any such scheme, to make contributions thereto;
- (j) to provide and maintain such recreational or holiday facilities for persons in the service of the Corporation, or for any other class or classes of the people of Samoa, as the board may think fit;
- (k) to promote any company or companies for the purpose of acquiring or taking over all or any of the business, property, rights and liabilities of the Corporation, or for any other purpose which may seem directly or indirectly calculated to benefit the Corporation;
- (l) to purchase, take on lease or in exchange, hire, and otherwise acquire any real and personal property and any rights or privileges which the Corporation may think necessary or convenient for the purposes of its business, and in particular any land, easements, buildings, works, apparatus, machinery, plant, and stock in trade;
- (m) to erect, construct, improve, maintain, develop, work, manage, carry out or control any buildings, works, factories, mills, roads, ways, aerodromes, tramways, bridges, reservoirs, watercourses,

wharves, ware-houses, electric works, shops, stores, and other works and conveniences which may seem calculated directly or indirectly to advance the Corporation's interests; and to contribute to, subsidise, or otherwise assist or take part in the construction, improvement, maintenance, development, working, management, carrying out, or control thereof;

- (n) to invest any funds of the Corporation not required to be currently expended in the discharge of the functions of the Corporation in such Government or other securities in Samoa or elsewhere as the Corporation may deem fit, and to withdraw or realise such investments at any time;
- (o) to lend and advance money or give credit to the Government of Samoa, or any statutory body, or any person or company; to guarantee and give guarantees for the payment of money or the performance of contracts or obligations by any person or company; and otherwise to assist any person or company;
- (p) to borrow or raise or secure the payment of money in such manner as the Corporation may think fit, and in particular by the issue of debentures or debenture stock, perpetual or otherwise, charged upon all or any of the Corporation's property (both present and future); and to purchase, redeem or pay off any such securities;
- (q) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants and other negotiable or transferable instruments;
- (r) to sell, exchange, lease or dispose of real or personal property, either by public auction or tender or private contract, for such consideration as the Corporation may think fit, and in particular for shares, debentures or securities of any company having objects altogether or in part similar to the functions of the Corporation;

- (s) to adopt such means of making known and advertising the business and products of the Corporation as may seem expedient;
- (t) to apply for, secure, acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise, and to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privilege, which any Government or authority or any Corporation or other public body may be empowered to grant; and to pay for, aid in and contribute towards carrying the same into effect; and to appropriate any of the Corporation's securities and assets to defray the necessary costs, charges and expenses thereof;
- (u) to apply for, promote, and obtain any statute, order, regulation or other authorisation or enactment which may seem calculated directly or indirectly to benefit the Corporation;
- (v) to take or hold mortgages, liens and charges to secure payment of the purchase price, or any unpaid balance of the purchase price, of any part of the Corporation's property of whatsoever kind sold by the Corporation, or any money due to the Corporation from purchasers and others;
- (w) to carry out research and experimental work;
- (x) to subscribe or guarantee money for any charitable or benevolent object, or for any exhibition, or for any public, general or useful object;
- (y) to carry out all or any of the functions of the Corporation and do all or any of the above things as principal, trustee, agent, contractor or otherwise, and by or through agents, or otherwise, and either alone or in conjunction with others;
- (z) to do all such other things as are incidental or conducive to the attainment of the functions and the exercise of the powers of the Corporation.

13. Policy of the Government – In the carrying out of its functions and in the exercise of its powers, the Corporation shall

have regard to any policy of the Government as may be communicated to it in writing by the Prime Minister.

14. Disposal of land – The Corporation shall not dispose of any land or any interest therein (otherwise than by way of lease for an initial term not exceeding 30 years, and such lease may, at the option of the Corporation, include a right of renewal for 1 or 2 further renewals, each renewal term not exceeding 30 years), unless the resolution to dispose of the land or interest has been approved by Cabinet.

15. Conduct of the business of the Corporation – The board of directors shall have the general conduct of the business of the Corporation, and may exercise any of its powers and authorities.

16. Contracts of the Corporation – (1) Contracts on behalf of the Corporation may be made as follows:

- (a) any contract which, if made between private persons, must be by deed shall, if made by the Corporation, be in writing under the common seal of the Corporation;
- (b) any contract which, if made between private persons, must be in writing signed by the parties to be charged therewith shall, if made by the Corporation, be in writing either under the common seal of the Corporation or signed by any person on behalf and by direction (either general or specified) of the Corporation;
- (c) any contract which, if made between private persons, may be made orally may, if made by the Corporation, be made orally by any person on behalf of and by direction (either general or specific) of the Corporation.

(2) The common seal of the Corporation shall not be affixed to any document except under a resolution of the directors, and the execution of any document so sealed shall be attested by 2 directors.

PART 4

MEETINGS OF THE CORPORATION

17. Meetings of the Corporation – (1) Meetings of the Corporation are to be held on such dates and at such times and places as the Corporation determines.

(2) A meeting of the Corporation is to be presided over by the Chairperson and, if the Chairperson is not present, by the deputy Chairperson. In the absence from any meeting of both the Chairperson and the deputy Chairperson, the members present shall appoint 1 of their number to be the Chairperson for that meeting.

(3) The Chairperson may at any time convene a special meeting of directors, and shall, on the requisition of any 3 directors, forthwith proceed to convene such a meeting.

(4) At all meetings of the Corporation 4 directors form a quorum.

(5) Every question before the Corporation shall be determined by a resolution carried by a majority of the valid votes of the directors present at any meeting and voting thereon.

(6) At any meeting the Chairperson shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(7) A resolution in writing signed, or assented to by letter or telegram, by all the directors shall be as valid and effectual as if it had been passed at a meeting of the Corporation.

(8) Subject to the provisions of this Act and of any regulations made under this Act, the Corporation may regulate its proceedings in such manner as it thinks fit.

18. Minutes of meetings – (1) The Corporation shall cause minutes to be kept in a book provided for the purpose:

(a) of the names of the persons present at each meeting of the Corporation; and

(b) of all resolutions and proceedings of meetings.

(2) The minutes, if signed by any person purporting to be the Chairperson or deputy Chairperson of the Corporation or the Chairperson of any meeting, is receivable in evidence without further proof.

(3) A copy of the minutes of every meeting shall be provided to every director.

19. Disclosure of conflicting interest – (1) A director who, otherwise than as a director, is directly or indirectly interested in any business of the Corporation shall, as soon as possible after the relevant facts have come to his or her notice, disclose the nature of his or her interest at a meeting of the board.

(2) A disclosure under this section shall be recorded in the minutes of the board meeting and, except as otherwise provided by a resolution of the board, the director shall not take part after the disclosure in any deliberation or decisions relating to the business, but shall be counted as present for the purpose of forming a quorum of the board meeting for any such deliberation or decision.

PART 5 EMPLOYEES OF THE CORPORATION

20. Officers of the Corporation – (1) The Head of State, acting on the advice of the Prime Minister, shall appoint the general manager of the Corporation.

(1A) The power to appoint under this section includes the power to promote, suspend, discipline or dismiss.

(1B) The General Manager or employee suspended under this section is entitled to receive one (1) month's salary only, effective from the date of suspension.

(1C) If a person employed by the Corporation is later acquitted of a charge and cleared of all allegations or any investigation relating to the subject of his or her suspension, the person must be reinstated without loss of any benefit or status and be paid the salary he or she lost as a result of any suspension from duty.

(1D) A person is not entitled to his or her salary if, as a result of the investigation relating to the subject of his or her suspension, he or she is not reinstated.

(2) The General Manager shall be the Chief Executive Officer of the Corporation and, subject to the provisions of this Act and of any regulations made under this Act and to the general direction of the board, shall be charged with the control and management of the operations of the Corporation.

(3) The Corporation may employ any other officers and employees as may be required for the efficient performance of the functions of the Corporation.

(4) The person holding office as General Manager, and all other officers and employees in the service of the Corporation, on the date this Act comes into force shall continue to be employed by the Corporation under and subject to the same terms and conditions as applied immediately prior to the date this Act comes into force as if they had been appointed under the provisions of this section.

21. Conditions of employment – All appointments, appeals, dismissals, conditions of leave, salary scales, promotions and all other matters relating to the conditions of employment of persons in the service of the Corporation may be governed by regulations made under this Act, and subject to any such regulations are under the jurisdiction of the board.

22. Delegation of powers by the Board – (1) The Board may, either generally or for any particular transaction or class of transaction or for any particular act of administration, control, or management, delegate any of its powers under this Act or under any regulations made under this Act to any of its directors or to the General Manager.

(2) No such delegation shall prevent the exercise by the board itself of any of the powers conferred on it by this Act or by any such regulation.

(3) Subject to any general or special directions given by the board any person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been directly conferred on him or her by this Act or any such regulation and not by delegation.

(4) A person purporting to act under any delegation under this section is, in the absence of proof to the contrary, presumed to be acting within the terms of the delegation.

(5) Any delegation under this section may be revoked by the board in whole or in part, but the revocation does not affect in any way any act or thing done under the delegated authority.

23. Delegation of powers by General Manager – (1) The General Manager may, either generally or for any particular transaction or class of transactions or for any particular act of administration, control or management, delegate any of his or her powers conferred on him or her by this Act or any regulations made

under this Act or by delegation from the board, to any of the other officers or employees of the Corporation.

(2) No such delegation shall prevent the exercise by the general manager himself or herself of any of those powers.

(3) Subject to any general or special directions given by the General Manager, any officer or employee to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been directly conferred on him or her by this Act or any such regulation and not by delegation.

(4) An officer or employee purporting to act under any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting within the terms of the delegation.

(5) A delegation made under this section may be revoked by the general manager in whole or in part, but the revocation does not affect in any way any act or thing done under the delegated authority.

PART 6 FINANCIAL PROVISIONS, ETC.

24. Application of profits – The annual profits of the Corporation, after the Corporation has set aside such sum or sums as it deems necessary or expedient by way of general or specific reserves, must be transferred to a separate account kept in the Treasury, and shall be applied for the welfare and economic and social benefit of the inhabitants of Samoa.

25. Investment of funds – Any funds of the Corporation not immediately required to be expended in the discharge of the functions of the Corporation may be invested by the Corporation in such classes of securities as the board may determine.

26. Accounts and audit – (1) The Corporation must keep accounts and other records, and must prepare in respect of each financial year a statement of accounts.

(2) The accounts of the Corporation shall include separate trading, profit and loss, and appropriation accounts and a balance sheet, all of which must to be approved by the board and signed on

behalf of the board by the Chairperson or other director designated by the Board.

(3) The accounts of the Corporation must be audited by the Controller and Auditor General, who may, with the consent of Cabinet, engage the services of such other auditor as shall be approved by Cabinet, to assist him or her.

(4) As soon as the accounts of the Corporation have been audited, the Corporation must send a copy of the statement of accounts, together with a copy of any report made by the auditor to Cabinet.

(5) The Prime Minister shall cause copies of the audited statement of accounts and any report made by the auditor to be laid before the Legislative Assembly within 28 days after the receipt of a copy by him or her if the Assembly is then in session or, if not, within 28 days after the commencement of the next ensuing session.

27. Annual report – (1) The Corporation must, as soon as possible after the end of each financial year, make to Cabinet a report dealing generally with the operations of the Corporation during that year and containing such information with respect to the proceedings and policy of the Corporation as can be made public without detriment to the interests of the undertaking of the Corporation.

(2) The Prime Minister shall cause copies of every such report to be laid before the Legislative Assembly within 28 days after the receipt of a copy by him or her if the Assembly is then in session or, if not, within 28 days after the commencement of the next ensuing session.

28. Regulations – (1) The Head of State, acting on the advice of Cabinet, may make regulations as may in his or her opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting subsection (1), regulations may be made for all or any of the following purposes:

- (a) prescribing the procedure of the Corporation and the Board of Directors;
- (b) providing for the payment of remuneration and expenses to Directors;

- (c) providing for appointments, appeals, dismissals, conditions of leave, salary scales, promotions and any other matters relating to the conditions of employment of all persons in the service of the Corporation;
- (d) providing for the establishment of or participation in any superannuation, pension, insurance or other scheme of a like nature that has at its object the provision of retirement funds or pensions or retirement allowances for persons in or formerly in the service of the Corporation or its predecessors in business, or the dependants or connections of any such persons;
- (e) prescribing any records to be kept by the Board or the Corporation.

29. Repeals and savings – (1) The Samoa Trust Estates Corporation Ordinance 1961 is repealed.

(2) The Samoa Trust Estates Corporation Regulations 1957 (N.Z.) are revoked and shall cease to be part of the law of Samoa.

(3) From the date this Act comes into force all references to the New Zealand Reparation Estates in any Act, Ordinance, Regulations, Rules, Order or other enactment, or in any agreement, deed, instrument, application, licence, notice or other document whatsoever shall, unless inconsistent with the context or with the provisions of this Act, be read as references to the Corporation.

(4) The enactment of this Act does not affect any document made, or action commenced, or thing done under the Samoa Trust Estates Corporation Ordinance 1961, or the Samoa Trust Estates Corporation Regulations 1957 (N.Z.), and every such document, action, or thing, so far as it is subsisting or in force at the date this Act comes into force and could have been made, commenced, or done, under this Act shall continue and have effect as if it had been made, commenced, or done, under the corresponding provision of this Act, and as if that provision had been in force when the document was made, action commenced, or thing done.

REVISION NOTES 2008 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division in 2008 to 2020/3 March 2021 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a”
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - (iii) “shall have” changed to “has”
 - (iv) “shall be guilty” changed to “commits”
 - (v) “notwithstanding” changed to “despite”
 - (vi) “pursuant to” changed to “under”
 - (vii) “it shall be lawful” changed to “may”
 - (viii) “it shall be the duty” changed to “shall”
 - (ix) Numbers in words changed to figures
 - (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed
 - (xi) “under the hand of” changed to “signed by”

This Act was amended by Act 2012, No. 15 in sections 3, 5, 6, and 8.

By the *Miscellaneous (Board of Public Bodies) Amendment Act 2020, No 6*, (commenced on 28 January 2020):

Section 5(1) substituted

By the *Miscellaneous (Salary Conditions Upon Suspension) Amendment Act 2021 No. 6* (commenced on 3 March 2021);

Section 20: new subsections (1A) – (1D) inserted.

*This Act is administered by
the Ministry of the Prime Minister and Cabinet.*