

SAMOA

INTERNATIONAL TRUSTS ACT 1987

(as amended, 2005)

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PART I - PRELIMINARY

Short title and commencement

1.(1) This Act may be cited as the International Trusts Act 1987.

(2) This Act shall come into force or any part or section thereof on such date as may be specified from time to time by the Head of State by Order.

Interpretation

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

“Authority” means the Samoa International Finance Authority established under the Samoa International Finance Authority Act 2005;

“Central bank” means the Central Bank of Samoa established pursuant to the Central Bank of Samoa Act 1984.

“Court” means the Supreme Court of Western Samoa.

“Disposition” means the making or grant or any transfer, sale, gift, lease, licence, easement, profit, mortgage, charge, encumbrance, trust, or other disposition, whether absolute or limited, and whether legal or equitable, of or affecting property or any interest therein; and includes a contract to make any such disposition; and includes the disposal of an interest in or right over property by the exercise of a power of appointment, power of maintenance, power of advancement or other authority; and also includes the conferring or variation or surrender of such powers or authority.

“Foreign company” means a foreign company registered under the International Companies Act 1987.

“Instrument” means any deed, testamentary instrument, or document giving effect to a disposition or appointment.

“International company” means a company which is incorporated under the International Companies Act 1987.

“International Trust” means a trust which is registered under this Act and in respect of which.

(a) At least one of the trustees, donors or holders of a power of advancement is either:

(i) A trustee company; or

(ii) An international company; or

(iii) A foreign company registered under part X of the International Companies Act 1987; and

(b) The beneficiaries are at all times non-resident.

“Minister” means the Minister of Finance.

“Non-resident” has the same meaning as in the Off Shore Banking Act 1987.

“Power of appointment” means an authority to dispose of any property, whether general or special, including:

- (a) A power collateral or in gross;
- (b) A power coupled with an interest, or a power appendant or appurtenant;
- (c) A discretionary power to transfer, grant or create a beneficial interest in property with or without the furnishing of valuable consideration by the appointees;
- (d) A power, the exercise of which by the donee is subject to the consent of a third party;
- (e) A power independent of or in defeasance of any existing estate or interest in the property which is the subject of the power; and
- (f) A power of revocation and new appointment; but does not include an Act of Parliament.

“Prescribed” means prescribed by regulation or in the absence of such regulation as may be publicly notified by the Registrar.

“Property” includes real and personal property, and any title, right, estate or interest in any property real or personal, and any debt, letter of credit, trade acceptance, banker's acceptance, documentary draft, forward exchange contract, loan collection advance, guarantee, and any thing in action, and any other right or interest.

“Public notice” means a notice published in a newspaper circulating in Western Samoa, in Samoan and in English, conveying the general effect of a matter or thing done or intended to be done; and “publicly notified” has a corresponding meaning.

“Registrar” means the Registrar of International Trusts and includes a Deputy Registrar.

“Registered foreign company” means a foreign company registered pursuant to Part X of the International Companies Act 1987.

“Representative trustee” is the trustee company, international company or foreign company registered under Part X which is the trustee of an international trust which has been authorised in writing by every other trustee of the trust to accept legal service and to sue and be sued in the name of each and every trustee.

“Trust” means an equitable obligation under which a trustee is bound to deal with trust property for the benefit of the beneficiaries of the trust or for charitable or for other lawful purposes of the trust and includes:

- (a) All dispositions or settlements of or in relation to trust property;
- (b) Powers in the nature of trusts or coupled with a trust;
- (c) Powers of appointment, whether testamentary or inter vivos;
- (d) Implies and constructive trusts;
- (e) Cases where the trustee has a beneficial interest in the trust property;
- (f) The duties incidental to the office of personal representative, donee of a power, and fiduciary; and “trustee” has a corresponding meaning.

“Trustee company” means a company registered as a trustee company under the provisions of the Trustee Companies Act 1987.

Application of Act

- 3.(1)** This Act, except where otherwise expressly provided, shall apply to:
- (a)* International trusts constituted or created either on, before or after the commencement of this Act;
 - (b)* Instruments registered under this Act whether they take effect on, before or after the commencement of this Act.
- (2)** This Act shall bind the Government except in respect of dispositions of property made by the Government.
- (3)** The powers conferred by or under this Act on a trustee are in addition to the powers given by the instrument, if any, creating the trust; but the powers so conferred, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

PART II - LAWS APPLICABLE TO INTERNATIONAL TRUSTS

Validation of international trust

- 4.(1)** Except as otherwise provided in this Act, the production of the register established and maintained under Part III of this Act or of a certified copy thereof shall be held in every Court of law or equity as evidence of the particulars therein set forth or endorsed thereon and of their being entered in the register, and shall, unless the contrary is proved, be conclusive evidence of the validity of the trust, disposition and power of appointment therein, any rule of law or equity and any rule of law or equity of the settlor's domicile or residence or place of incorporation to the contrary notwithstanding.
- (2)** No trust shall be validated hereunder by registration occasioned:
- (a)* By fraud; or by fraudulent omission, or misrepresentation of any kind on the part of any person in registering the trust under this Act;
 - (b)* By fraud, on the part of any person causing or procuring the disposition of the trust property;
 - (c)* By fraud on the part of any person exercising a power of appointment;
 - (d)* By the improper use of the seal of any corporation, company, Court, officer, or other person authorised or required by law to use any such seal;
 - (e)* By fraud on the part of the settlor to defraud creditors of the settlor.
- (3)** In determining any question concerning an international trust registered under this Act, the Court shall apply:
- (a)* The provisions of this Act;
 - (b)* The English common law and equity for the time being in force in Western Samoa in so far as they are not excluded by this Act;
 - (c)* If to do so would validate the trust instrument, disposition on appointment, the law of any foreign State:
 - (i)** Where the trust, instrument, disposition or appointment was executed;

- (ii) Where the trustees, or any one of them (if more than one), are normally resident or domiciled;
- (iii) Where the trust property is situated, or
- (iv) Where the settlor, beneficiaries or appointees (any one, group or all) are normally resident or domiciled.

5-10. Repealed

Presumption against avoidance of trusts

11.(1) Unless a trust contains an express power of revocation it shall be deemed to be irrevocable by the settlor and his legal personal representatives notwithstanding that it is voluntary.

(2) Notwithstanding any provision of the law of the settlor's domicile or place of ordinary residence or place of incorporation and notwithstanding further that the trust is voluntary and without valuable consideration being given for the same, or is made on or for the benefit of the spouse or children of the settlor or any of them, an international trust shall not be void or voidable in the event of the settlor's bankruptcy or liquidation or in any action or proceedings at the suit of creditors of the settlor unless it is proven to the satisfaction of the Court that the trust was made with the intent to defraud creditors of the settlor.

(3) For the purpose of this section the onus of proof of the settlor's intent to defraud his creditors lies on those creditors.

Charitable and Purpose Trusts

12.(1) Notwithstanding any rule of law to the contrary an international trust shall be deemed to be charitable or for purposes which are charitable where it is a trust substantially for one or more of the following objects or purposes, namely:

- (a) For the relief of poverty;
- (b) For the advancement of education;
- (c) For the advancement of religion;
- (d) For other purposes beneficial to the community, notwithstanding that the object or purposes may not be of a public nature or for the benefit of the public, but may be for the benefit of a section of the public or members of the public, or that it may also benefit privately one or more persons or objects or person within a class of persons or is liable to be defeated whether by the exercise of a power of appointment or disposition or that the trustee has the power to defer the enjoyment of any charity or other beneficiary of the trust for any period not exceeding the perpetuity period applying or expressed to apply to the trust, and notwithstanding further that the trust may be discretionary or contingent upon the happening of any event.

(2) Notwithstanding any rule of law or equity to the contrary a trust settled or established by a non-resident of Western Samoa shall not be void or voidable by virtue of the fact that the trust fund shall be held for a purpose or purposes, whether charitable or not, provided that the trust must vest in natural persons within the perpetuity period applying or expressed to apply to the trust; and any trust so created shall be enforceable by the settlor or his personal representatives or by the person or persons named in the instrument establishing the trust as the person or persons appointed to enforce the trust and the trust shall be enforceable at the instance of the person or persons so named notwithstanding that such person or persons are not beneficiaries under the trust.

Investments

13.(1) A trustee shall not invest any of the trust funds in his or its hands other than in securities, assets or property authorised expressly or by necessary implication for the investment of the trust funds by and under the instrument by which the trust is established or created.

(2) Where the instrument by which the trust is established or created authorises or by necessary implication authorises the investment of trust funds in any investment authorised by the law of Western Samoa for the investment of trust funds the instrument shall be deemed to authorise investment in such other investments as may be expressed to be trustee investments by regulations made under this Act.

PART III - REGISTRATION OF INTERNATIONAL TRUSTS

Registrar

14.(1) There shall from time to time be appointed, by the Authority and publicly notified, a Registrar of International Trusts.

(2) There shall from time to time also be appointed by the Authority such Deputy Registrars, and other officers as may from time to time be required.

(3) Anything authorised or required to be done by the Registrar under this Act may be authorised or done by any Deputy Registrar.

(4) The Registrar shall have and use a seal of office bearing the impression of the official crest of Western Samoa with the Words "Registrar of International Trusts Western Samoa" encircling the crest; and every instrument bearing the imprint of such seal, and purporting to be signed or issued by a Registrar, or by his deputy, shall be received in evidence, and shall be deemed to be signed or issued by or at the direction of the Registrar, without further proof, unless the contrary is shown.

(5) The office of Registrar may be held in conjunction with other offices, and the functions thereof may be exercised concurrently.

15. *Repealed*

Only registered international trusts entitled to benefits

16. No international trust shall be entitled to the privileges and exemptions under Part IV unless a valid current certificate of registration under this Part has been issued in respect of the trust.

Register of international trusts

17. The Registrar shall keep a register, whether in the form of a book or otherwise, and shall record thereon the particulars of international trusts.

Application for registration

18.(1) Every person who desires to obtain the registration on an international trust under this Act shall make application to the Registrar in the prescribed form.

(2) Every application shall be accompanied by:

- (a)* Repealed;
- (b)* The prescribed fee payable to the Registrar;
- (c)* Repealed;
- (d)* A certificate by the trustee or, if more than one, by any one trustee, that the trust upon registration will be an international trust;
- (e)* A notice of the name of the trust and other particulars to be entered on the register;
- (f)* A notice of the office of the representative trustee to be entered on the register which office shall be the registered office of a trustee which is:
 - (i)** A registered foreign company;
 - (ii)** A trustee company; or
 - (iii)** An international company.

(3) When an application lodged for registration with the Registrar is found not to be in order for registration the Registrar shall return the application and all other documents lodged in connection therewith to the person by whom they were lodged specifying the matter or matters which require rectification or which disqualify the trust from registration.

(4) Where any application is returned as provided in subsection (3), any fees paid to the Registrar in respect of that application shall be forfeited, unless any matter required to be rectified is so rectified or any disqualification is removed or overcome and the application is again lodged with the Registrar within a period of 2 months from the date of its return by the Registrar.

Registration

19.(1) Where the Registrar has accepted an application for registration of an international trust made in accordance with section 11, he shall enter into the register of international trusts, the name of the trust, the address of the registered office of the trust and the date of registration, whereupon the trust shall be deemed to be registered.

(2) Upon registration of an international trust the Registrar shall issue a certificate of registration in the prescribed form and shall forward such certificate to the representative trustee at the registered office of the international trust.

(3) A certificate of registration under the hand and seal of the Registrar shall be conclusive evidence that all the requirements of this Act in respect of registration and other matters precedent and incidental thereto have been complied with and that the international trust referred to therein has been duly registered under this Act.

(4) A trustee of an international trust may file with the Registrar a copy of the trust instrument and of any amendment thereto duly certified in the manner prescribed and the Registrar, upon payment of the prescribed fee, shall register that copy trust instrument or copy amendment as a true copy and shall note on the register that a copy trust instrument or amendment of the trust instrument has been filed.

(5) The Authority shall have the right without assigning any reasons, to direct the Registrar not to register any particular trust or trusts.

Annual certificate of registration

20.(1) A certificate of registration issued pursuant to section 19 shall be valid and effective for one year from the date of registration.

(2) Application for renewal of registration may be made to the Registrar on the prescribed form within one month prior to the date of the expiry of the certificate of registration and, on payment of the prescribed fee, the Registrar shall issue a certificate of renewal of registration.

(3) Subject to section 28B of this Act, no application for renewal of registration made pursuant to subsection (2) of this section shall be granted where the application is filed or the renewal fee is paid after the date of expiry of the last certificate of registration unless the Registrar is satisfied that the omission to apply to renew the registration or pay the renewal fee was inadvertent or unavoidable for good reasons in which event the Registrar may within one month after the date of expiry of the certificate and payment of the annual fee and the prescribed penalty, issue a renewal certificate of registration.

(4) Every renewal of registration shall be valid and effective for one year from the date of expiry of the last certificate of registration.

21. Repealed

Registered office

22.(1) An international trust shall maintain a registered office in Western Samoa which office shall be the registered office of the representative trustee.

(2) The address for service of any documents upon an international trust shall be the registered office of the trust.

(3) Every international trust shall have its name displayed at its registered office in a conspicuous position and in letters easily legible.

Registration may be revoked without appeal

23.(1) Registration of an international trust may be revoked by the Registrar where:

- (a)* Any trustee company, international company or registered foreign company ceases to be registered in Western Samoa;
- (b)* The trust fails to maintain a registered office in Western Samoa as required by section 22;
- (c)* Any trustee of the trust has made a distribution, disposition, or otherwise conferred any benefit on any person other than a non-resident of Western Samoa as if that person were a beneficiary so entitled;
- (d)* The trust has been declared invalid by any decree, order or judgement which is in full force and has been in full force for not less than 3 months;
- (e)* Any trustee of the trust has been bankrupt or convicted of any crime involving any dishonesty in any country or has been sentenced to a term of imprisonment.

(2) The Authority may at the request of the Registrar make an order directing an international trust to cease

to maintain its registered office in Western Samoa in which event the registration of the international trust shall be revoked with effect from fourteen days after the date of such order or such later date as may be specified in the order.

(3) Where registration is revoked under subsection (1) or (2) of this section, the trust shall cease to be entitled to the privileges and exemptions under Part IV; and the Registrar shall make an entry in the register noting that the registration of the trust has been revoked.

(4) On the revocation of registration of a trust, representative trustee shall, on demand, deliver the outstanding certificate, of registration to the Registrar (which shall be defaced or otherwise marked or destroyed), and remove the name plate or other display of the name of the international trust from its place of business.

(5) The Registrar shall give his reasons for any decision under subsection (1) to the representative trustee.

(6) The Authority need not assign reasons for making an order under subsection (2) and in making such an order the Authority shall not be required to act judicially. An order made under subsection (2) shall be final.

PART IV - PRIVILEGES AND EXEMPTIONS RELATING TO INTERNATIONAL TRUSTS

Exemption from taxation, duties and returns

24.(1) For the purposes of this section an international trust shall include severally each trustee as trustee of the international trust and each of the beneficiaries as beneficiaries of the international trust.

(2) Notwithstanding anything contained in any other enactment:

(a) No income tax, stamp duty, nor any other direct or indirect tax or impost shall be levied in Western Samoa on the transactions, contracts, securities or other dealings nor upon the income, profits or gains of an international trust including interest, dividends or other earnings from any business conducted by an international trust;

(3) Notwithstanding anything contained in any enactment other than this Act, the Off-Shore Banking Act 1987, the International Companies Act 1987 and the Trustee Companies Act 1987, an international trust shall not be required to:

- (a) Deposit any money in any public account;
- (b) File any accounts, returns, reports or records; and
- (c) Register with or be licensed by any authority.

Banking Business

25. All banking business carried out in Western Samoa under or in connection with an international trust in Western Samoa shall be carried out either through a trustee company or by an offshore bank licensed under the Off-Shore Banking Act 1987 or a bank approved for that purpose by the Registrar and shall be exempt from taxation, stamp duties, currency and other exchange controls as provided in that Act.

Exemption from currency and exchange control

26.(1) No person shall transact any business under or in connection with an international trust, in the currency

of Western Samoa, or by, for, or in respect of any person other than a non-resident of Western Samoa.

(2) Any business transacted under or in connection with an international trust in compliance with the restrictions in subsection (1) shall be exempt from any currency and exchange control restrictions or regulations; and no foreign exchange levy shall be imposed or be payable in respect of such business.

(3) Every person commits an offence and is liable on conviction to a fine not exceeding \$10,000 and, if, the offence is a continuing one, to a further fine not exceeding \$500 for every day on which the offence has continued who contravenes subsection (1) of this section.

Secrecy

27.(1) Except where the provisions of this Act require and subject to subsection (2) of this section, it shall be an offence for a person to divulge or communicate to any other person information relating to the establishment, constitution, business undertaking or affairs of an international trust.

(2) All judicial proceedings, other than criminal proceedings relating to international trusts shall, unless ordered otherwise be heard in camera and no details of the proceedings shall be published by any person without leave of the Court or person presiding.

(3) Every person who commits an offence under this section shall be liable upon conviction to imprisonment for a term not exceeding 5 years, or to a fine not exceeding \$50,000 or both.

PART V – MISCELLANEOUS

Prohibited international trust activities

28.(1) An international trust shall not:

- (a)* Use or operate under a name which:
 - (i)** So closely resembles or is identical to the name of any company, firm, business house or other financial entity or institution whether within or outside Western Samoa as is likely to mislead or deceive;
 - (ii)** Is calculated to suggest falsely the patronage of or connection with some person or authority whether within Western Samoa or not; or
 - (iii)** Is calculated to suggest falsely that such trustee has a special status in relation to or derived from the Government of Western Samoa or has the official backing of or acts on behalf of the said Government or of any department or official thereof or is recognised in Western Samoa as a national or central bank;
- (b)* Make any disposition or grant any power or settle any property on any person who is a resident of Western Samoa other than a company incorporated or registered under the International Companies Act 1987 or a trustee company registered under the Trustee Companies Act 1987;
- (c)* Make any disposition or grant any power or settle any property in the currency of Western Samoa;
- (d)* Engage in any advertising or soliciting of trust business within Western Samoa; or
- (e)* Engage in any such activities as may be prescribed from time to time by regulations

issued by the Head of State acting on the advice of the Authority.

(2) Every person who acts in contravention of this section commits an offence against this Act and is liable on conviction to a fine not exceeding \$1,000 for each offence and where the offence is a continuing one, \$1,000 for each day during which the offence continues.

Proceedings by or against an international trust

28A. Where any proceedings are instituted by or against an international trust it shall be sufficient to name the representative trustee entered on the register and it shall not be necessary to join in the action any other trustee.

Power of Exemption

28B.(1) The Authority may on its own motion or pursuant to an application in writing lodged with the Registrar by an international trust or a trust, which if it were registered would be an international trust exempt that international trust or trust from all or any of the provisions of this Act and any Regulations made thereunder and may impose such terms and conditions as it thinks fit as a condition under which that exemption is granted. An exemption so granted may be revoked or varied by the Authority at any time.

(2) In dealing with an application under this section the Authority shall not be required to act judicially and its decision shall in all cases be final.

(3) Any exemption or condition imposed pursuant to subsection (1) of this section, shall take effect as from the date to be decided by the Authority in its discretion.

English the authentic text

29.(1) Every document filed with the Registrar, and all records and accounts required to be kept under this Act shall be in the English language.

(2) Where a document is not in the English language it shall be accompanied by, an authentic English translation; and in the event of any conflict in meaning between the foreign language and the English versions, the English version shall prevail.

General penalty for offences

30. Every person who commits an offence against this Act and any regulations issued hereunder for which no penalty is provided otherwise than in this section is liable upon conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$10,000 or to both, and, if the offence is a continuing one, to a further fine not exceeding \$500 for every day during which the offence has continued.

Regulations

31. The Head of State acting on the advice of Cabinet, may from time to time make Regulations prescribing all matters and things required or authorised by this Act to be prescribed or provided, or which are necessary or convenient to be prescribed or provided, for the carrying out of or the giving full effect to the provisions of this Act and its due administration including all or any of the following particular purposes:

(a) Prescribing forms to be used for the purposes of this Act and the matters to be

specified in such forms;

- (b) Prescribing forms of application and other notices under this Act;
- (c) Fixing, the fees and charges to be paid under this Act and the penalties for breaches thereunder, or delegating the power of fixing such fees charges and penalties to prescribed persons or bodies.

Procedure where none laid down

32. In the event that any 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 Regulations for doing the same, application may be made to the Registrar for directions as to the manner in which the same may be done, and any act or step done or taken in accordance with his directions shall be valid performance of such act or step.

Trustee Act

33. Nothing in provisions of the Trustee Act 1975 shall apply to any international trust registered under this Act.

SCHEDULE

Section 21

INCIDENTAL OR CONSEQUENTIAL AMENDMENTS

SECTION	AMENDMENTS
22(3)	By inserting after the words “Every person” the words “who contravenes subsection (2) of this section”: by omitting all the words after the words “offence has continued”.
23(1) (e)	By inserting after the words “trust has been” the words “made bankrupt or”: by inserting after the “crime” the words “involving any dishonesty”: by omitting the word “and” and substituting the word “or” by omitting all of the words after the word “imprisonment”.
25(1)	By inserting after the expression “1987” the words “or a bank approved for that purpose by the Registrar”.
26(2)	By omitting the word “prescriptions” and substituting the word “restrictions”
27(3)	By omitting the word “of” and substituting the words “not exceeding”.
28(1) (a) (iii)	By omitting the word “licenser” and substituting the word “trustee”.
28(1) (d)	By omitting the word “and” and substituting the word “or”.
28(1) (e)	By omitting the words “such other” and substituting the words “engage in any such”.
28(2)	By inserting after the word “offence” the words “against this Act”: by inserting after the expression \$1000 the words “for each offence and where the offence is a continuing one, \$1000”.
30	By omitting the word “on” and inserting the word “during”.

NOTES

Section 2 -	Was amended by section 2 of the Amendment Act 1988 (No. 45).
Section 4(3)(a) - (b), (c)	Was amended by section 3 of the Amendment Act 1988 (No. 45).
Sections 5-10 & 15 -	Was repealed by section 4 of the Amendment Act 1988 (No. 45).
Section 16 -	Was amended by section 5 of the Amendment Act 1988 (No. 45).
Sub-section 17(2) -	Was repealed by section 6 of the Amendment Act 1988 (No. 45).
Section 18(2)(a)(c) -	Was repealed by section 7 of the Amendment Act 1988 (No. 45).
Section 18(3) -	Was substituted by section 7 of the Amendment Act 1988 (No. 45).
Section 19 -	Was repealed and a new section 19 was substituted by section 8 of the Amendment Act 1988 (No. 45).
Section 20 -	Was substituted by section 9 of the Amendment Act 1988 (No. 45).
Section 21 -	Was repealed by section 10 of the Amendment Act 1988 (No. 45).
Section 22 -	Was substituted by section 11 of the Amendment Act 1988 (No. 45).
Section 23 -	Was amended by section 12 of the Amendment Act 1988 (No. 45).
Section 24 -	Was substituted by section 13 of the Amendment Act 1988 (No. 45).
Section 25 -	Was substituted by section 14 of the Amendment Act 1988 (No. 45).
Section 26 -	Was amended by section 15 of the Amendment Act 1988 (No. 45).
Sections 28A & 28B -	Were added by sections 16 and 17 of the Amendment Act 1988 (No. 45).
Section 31 -	Was substituted by section 18 of the Amendment Act 1988 (No. 45).

Section -32 -	Was added by section 19 of the Amendment Act 1988 (No. 45).
Section 33 -	Was added by section 20 of the Amendment Act 1988 (No. 45).

The Schedule to this Act was added by section 21 of the Amendment Act 1988 (No. 45).