

CONVENTIONAL ARMS BILL 2017

SAMOA

Explanatory Memorandum

Objects and reasons:

The object of the Bill is to domesticate and implement the Arms Trade Treaty (“ATT”) that was signed by Samoa in 2013. The ATT aims to regulate legal transport of conventional arms from country to country so that the transport of the same are not for the purpose of committing international crimes. The Bill therefore ensures that the prevention and eradication of illicit trade and diversion of conventional arms is maintained.

Clauses:

PART 1

PRELIMINARY

- Clause 1:** - states that, when enacted, the Bill will be called the Conventional Arms Act 2017, and will commence on the date nominated by the Minister.
- Clause 2:** - provides for definitions of terms used in the Bill.
- Clause 3:** - provides that the Act will not apply to the transfer of ammunition and conventional arms, ammunition or parts and components for use by the Government. The Act does not also affect relevant rights under international law applicable to any ship exercising the right of passage, transit or any ship or aircraft in distress.

PART 2**REGULATION OF CONVENTIONAL ARMS**

- Clause 4:** - provides that the Ministry of the Prime Minister and Cabinet is the designated National Competent Authority.
- Clause 5:** - prohibits a person from importing or exporting any conventional arms, ammunition, or their parts and components except for the purpose of transshipment or a transit under a transit or transshipment permit.
- Clause 6:** - authorises the Chief Executive Officer (“CEO”) to issue or refuse the issuing of permits for transit or transshipment of conventional arms, ammunition or their parts and components through Samoa. Circumstances where the CEO may refuse issuing of permits are also provided.
- Clause 7:** - provides for the requirements and procedures when a person applies for a permit.
- Clause 8:** - provides for the conditions a permit is subject to.

PART 3**MISCELLANEOUS**

- Clause 9:** - provides that information in relation to any matter covered under the Act must be kept by the CEO, and information at custom border control in relation to any conventional arms, ammunitions or any of their parts or components in transit or transshipment must be kept by the Comptroller of customs (“Comptroller”) or a person authorised by the Comptroller.

- Clause 10:** - empowers the CEO or a person authorised by the CEO to investigate and inspect any conventional arms, ammunition or any of their parts or components in transit or transshipment, or investigate any breach of the Act.
- Clause 11:** - empowers the Head of State to make Regulations acting on the advice of Cabinet, and the approval of forms under this Act by the CEO.
- Clause 12:** - provides for a consequential amendment to be made to section 6(3) of the Arms Ordinance 1960.

Schedule:



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(Hon TUILAEPA Auelua Fatialofa Lupesoliai Lolofietele
Neioti Aiono Galumalemana Dr. Sailele Malielegaoi)

PRIME MINISTER

CONVENTIONAL ARMS BILL 2017

SAMOA

Arrangement of Provisions

PART 1

PRELIMINARY

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MISCELLANEOUS**

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Schedule

2017, No.

A BILL INTITULED

AN ACT to implement the Arms Trade Treaty and for related purposes.

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 Conventional Arms Act 2017.
- (2) This Act commences on a date nominated by the Minister.

2. Interpretation:

In this Act, unless the context otherwise requires:

“ammunition” means:

- (a) for any small arms and light weapons, the complete round or component of ammunition, including a cartridge case, primer, propellant powder, bullet or projectile, that is used in a small arm or light weapon, or any conventional arm listed in the Schedule; and
- (b) for any conventional arms listed in the Schedule, munition fired, launched or delivered by that conventional arm.

“antique small arms and light weapons” means any small arms or light weapons manufactured during or before 1899;

“armoured combat vehicles” means any tracked, semi-tracked or wheeled self-propelled vehicles, with armoured protection and cross-country capability:

- (a) designed and equipped to transport a squad of at least four (4) infantrymen; or
- (b) armed with an integral or organic weapon of at least 12.5 millimetres calibre or a missile launcher.

“attack helicopter” includes any of the following manned and unmanned aerial vehicles:

- (a) manned rotary-wing aircraft designed, equipped or modified to engage targets by employing guided or unguided anti-armour weapon, air-to-subsurface weapon, or air-to-air weapon and equipped with an integrated fire control and aiming system for those weapons, including versions of aircraft which performs any specialised reconnaissance or electronic warfare mission; or

- (b) unmanned rotary wing aircraft designed, equipped or modified to engage targets by employing guided or unguided anti-armour weapon, air to surface weapon, air-to-subsurface weapon, or air-to-air weapon and equipped with an integrated fire control and aiming system for those weapons.

“Authority” means the National Competent Authority designated under section 4;

“battle tank” means any tracked or wheeled self-propelled armoured fighting vehicle with high cross-country and a high level of self-protection, weighing at least 16.5 metric tons unladen weight, with a high muzzle velocity direct fire main gun of at least 75 millimetres calibre;

“Chief Executive Officer” or “CEO” means the Chief Executive Officer for the Ministry responsible for this Act;

“combat aircraft”:

- (a) means a combat aircraft which includes any of the following manned and unmanned aerial vehicle -
 - (i) manned fixed wing or variable geometry wing aircraft, designed, equipped or modified to engage any target by employing any guided missile, unguided rocket, bomb, gun, cannon or any other weapon of destruction, including versions of combat aircrafts which perform specialised electronic warfare, suppression of air defence or reconnaissance missions;
 - (ii) unmanned fixed-wing or variable geometry wing aircraft, designed, equipped or modified to engage any target by employing any guided missile, unguided rocket, bomb, gun, cannon or other weapon of destruction; but

- (b) does not include primary trainer aircraft, unless designed, equipped or modified as described in paragraph (a).

“conventional arms” means any conventional arms listed in the Schedule;

“large-calibre artillery system” means any gun, howitzer, artillery piece, combining the characteristics of a gun or a howitzer, mortar or multiple-launch rocket system, capable of engaging any surface target by delivering primarily indirect fire, with a calibre of 75 millimetres and above;

“light weapon” means any heavy machine gun, hand-held under-barrel and mounted grenade launcher of anti-tank missile and rocket system, portable launcher of anti-aircraft missile system, and mortar of a calibre of less than 100 millimetres;

“missile and missile launcher”:

- (a) means -
 - (i) any guided or unguided rocket, ballistic or cruise missile capable of delivering a warhead or weapon of destruction to a range of at least 25 kilometres, and designed or modified specifically for launching missiles or rockets, if not covered by items listed from paragraphs (a) to (e) and (i) of the Schedule, including remotely piloted vehicle with the characteristics for missiles; or
 - (ii) a man-portable air defence systems;
- (b) does not include ground to air missiles.

“small arm” means any revolver, self-loading pistol, rifle, carbine, sub-machine gun, assault rifle or light machine gun;

“small arms and light weapons”:

- (a) means any man-portable lethal weapon that expels or launches, that is designed to expel or launch (or may be readily converted to expel or launch) a shot, any bullet or projectile by the action of an explosive; and
- (b) includes any of the items listed in paragraphs (f) and (h) of the Schedule; but
- (c) does not include any small antique arms and antique light weapons or their replicas.

“transfer” means the international movement of conventional arms, ammunition, or any of their parts or components;

“transit or transshipment permit or permit” means a permit issued under section 6;

“transit” means the conveyance or movement of conventional arms, ammunition or their parts or components through Samoa to another country;

“transshipment” means the movement of conventional arms, ammunition or their parts or components through Samoa to another country of goods, where the goods are transferred from the importing means of transport to the exporting means of transport;

“warship” means any vessel or submarine armed and equipped for military use with a standard displacement of at least 500 metric tons, or those with a standard displacement of less than 500 metric tons, equipped for launching missile or torpedoes with a range of at least 25 kilometres.

3. **Application:**

- (1) This Act:

- (a) does not apply to the transfer of ammunition and conventional arms, ammunition or their parts and components for use by the Government so long as the conventional arms, ammunition or their parts and components remain under the ownership of the Government; but
- (b) applies if the transfer breaches section 6(2).
- (2) The Arms Ordinance 1960 is subject to section 6(2)(a)(i) of this Act.
- (3) Nothing in this Act affects any of the following rights under international:
 - (a) right of innocent passage through the territorial sea of Samoa;
 - (b) the right of transit passage under international law through or over any strait used for international navigation;
 - (c) any right of any ship or aircraft in distress.

PART 2

REGULATION OF CONVENTIONAL ARMS

4. National Competent Authority:

The Ministry of the Prime Minister and Cabinet is designated as the National Competent Authority for the purposes of this Act.

5. Prohibition and restriction on import or export:

- (1) A person must not import into or export from Samoa, any conventional arms or ammunition or their parts and components except under a transit or transshipment permit.
- (2) A person who contravenes subsection (1) commits an offence and is liable upon conviction:

- (a) for an individual, to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 10 years, or both; or
 - (b) for a body corporate, a fine not exceeding 1,000 penalty units.
- (3) If an offence under this section is committed by a body corporate and it is proven that the offence:
- (a) was committed with the consent and connivance of; or
 - (b) is attributable to any negligence on the part of, any director, manager or other similar officer of the body corporate, or any person purporting to act in that capacity, the person also commits the offence and is liable to the penalties under subsection (2)(a).

6. Permit:

- (1) The Chief Executive Officer may:
 - (a) upon application issue a transit or transhipment permit, with or without conditions, in addition to those in section 8 authorising the permit holder to transit or tranship conventional arms, ammunition or their parts and components through Samoa; or
 - (b) refuse to issue a permit.
- (2) The Chief Executive Officer must not issue a permit if:
 - (a) issuing the permit will -
 - (i) contravene Samoa's obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, including arms embargoes; or

- (ii) contravene Samoa's international obligations under any international agreement, treaty, convention or protocols to which Samoa is a Party; or
 - (iii) threaten regional and national security and stability and development; or
- (b) the Chief Executive Officer has knowledge that the conventional arms or ammunition or their parts and components would be used in -
 - (i) the commission of genocide; or
 - (ii) crimes against humanity; or
 - (iii) grave breaches of the Geneva Conventions of 1949; or
 - (iv) attacks directed against civilian objects or civilians protected as such; or
 - (v) other war crimes as defined by any international agreement, treaty, convention or protocols to which Samoa is a party; or
 - (vi) any terrorist act as defined under the Counter Terrorism Act 2014.
- (3) The power to issue a permit includes the power to suspend, vary or revoke the permit or to impose other conditions of the permit.

7. Application for permit:

- (1) A person may apply to the Chief Executive Officer for a transit or transshipment permit.
- (2) The application must:
 - (a) be made at least four (4) weeks before the transit or transshipment occurs; and
 - (b) include the following -

- (i) the prescribed fees for application and permit; and
 - (ii) a clearance certificate from the police or any other relevant authority from the exporting country of conventional arms, ammunition or their parts or components; and
 - (iii) a list of names of conventional arms, ammunition or their parts or components that is being transhipped, transited or transferred;
 - (iv) any other prescribed information.
- (3) As an exception to subsection (2)(a) the Chief Executive Officer may consider applications under four (4) weeks in special circumstances as the Chief Executive Officer considers appropriate.
- (4) The Chief Executive Officer, before deciding to issue a permit:
- (a) must consult all of the following -
 - (i) the Minister responsible for Immigration;
 - (ii) the Commissioner of Police;
 - (iii) the Chief Executive Officer responsible for the Ministry for Revenue;
 - (b) may consult any other relevant Government agency the Chief Executive Officer considers necessary.

8. Condition for permit:

A permit is subject to all the following conditions:

- (a) for transit of any conventional arms, ammunition or any of their parts or components, they must remain on board the vessel for the entire period that they pass through the international waters of Samoa;
- (b) for transhipment of any conventional arms, ammunition or any of their parts or components, they are transhipped onto another ship or aircraft at a port of entry or airport in Samoa, but are to be exported before the end of the period of 30 days from the date of importation;

- (c) the destination of the conventional arms, ammunition or any of their parts or components, following exportation from Samoa has been determined in the exporting country prior to their original exportation in connection with the transaction which has given rise to the transit or transshipment and has not been changed prior to their exportation from Samoa, or the conventional arms, ammunition or their parts or components are being returned to the exporting country;
- (d) the conventional arms, ammunition or any of their parts or components in question were exported from the exporting country under its laws regulating the Arms Trade Treaty.

PART 3

MISCELLANEOUS

9. Record-keeping:

Information for the purposes of this Act must be kept by the following:

- (a) the Chief Executive Officer in relation to information in an application for a permit; and
- (b) the Comptroller of Customs or a person authorised by the Comptroller of customs for information at customs border control relating to any conventional arms, ammunition or any of their parts or components in transit or transshipment under this Act.

10. Inspection and investigation:

- (1) The Chief Executive Officer or a person authorised by the Chief Executive Officer may inspect any conventional arms, ammunition or any of their parts or components in transit or transshipment under this Act.

- (2) Subsection (1) does not affect any functions of a Ministry or government agency under any enactment to inspect any conventional arms, ammunition or any of their parts or components in transit or transshipment or in Samoa.
- (3) The Chief Executive Officer or other personnel authorised by the Chief Executive Officer may investigate a breach of this Act.
- (4) This section does not affect the power of:
 - (a) a police officer to investigate an offence under this Act; or
 - (b) the powers of the customs officers under the Customs Act 2014; or
 - (c) the Director or Public Prosecutions to prosecute any offences under this Act.

11. Regulations and forms:

- (1) The Head of State, acting on the advice of Cabinet, may make regulations that are necessary to give effect to or for the purposes of this Act, and in particular may make any or all of the following regulations:
 - (a) to establish a National Control System for the Authority to regulate the importation and exportation of conventional arms;
 - (b) to prescribe offences for regulations and penalties for a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 10 years;
 - (c) to prescribe fees for this Act subject to prior approval of the National Revenue Board;
 - (d) to prescribe other conditions;
 - (e) to prescribe other procedures for the purposes of this Act.

- (2) The Chief Executive Officer may approve forms for this Act.

12. Consequential amendment:

In section 6 of the Arms Ordinance 1960 for subsection (3) substitute:

- “(3) The Arms Officer:
- (a) may revoke any permit to import firearms issued under this section; or
 - (b) must not issue a permit to import firearms under this section,
- if it is in contravention of section 6(2) of the Conventional Arms Act 2017.”.

(Section 2)

List of conventional arms

- (a) Armoured combat vehicles
 - (b) Attack helicopters
 - (c) Battle tanks
 - (d) Combat aircraft
 - (e) Large-calibre artillery systems
 - (f) Light weapons
 - (g) Missiles and missile launchers
 - (h) Small arms
 - (i) Warships
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