

FOUNDATIONS AMENDMENT BILL 2019

SAMOA

Explanatory Memorandum

Objects and Reasons:


The Bill seeks to amend the Foundations Act 2016 (“principal Act”).

The object of the Bill is to insert a new provision under Part 8A of the principal Act to provide for simplification where the foundation is not a foreign benefitting foundation.

Clauses:

- Clause 1:** - provides for the short title and commencement date of the Bill.
- Clause 2:** - inserts new definition in section 2 of the principal Act of “foreign benefitting foundation”.
- Clause 3:** - amends section 12(4) of the principal Act to substitute reference to “section 92(7)” with “section 76A(8)”.
- Clause 4:** - amends section 76A(1)(a) of the principal Act to substitute reference to “section 93(8)” with “section 76B(8)”.
- Clause 5:** - inserts new section 76B under Part 8A of the principal Act to enable the appointment of an “appointed individual” who will act as resident agent for foundations that do not fall under the definition of “foreign benefitting foundation”.

- Clause 6:** - provides for consequential amendment to the Income Tax Act 2012 in relation to the definition of “foreign benefitting foundation”.



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(Hon SILI EpaTuioti)

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

FOUNDATIONS AMENDMENT BILL 2019

SAMOA

Arrangement of Provisions

1. Short title and commencement
2. Section 2 amended
3. Section 12 amended
4. Section 76A amended
5. New section 76B inserted
6. Consequential amendment

2019, No.

A BILL INTITULED

AN ACT to amend the Foundations Act 2016 (“principal Act”).

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

1. Short title and commencement:

- (1) This Act may be cited as the Foundations Amendment Act 2019.
- (2) This Act commences on the date of its assent by the Head of State.

2. Section 2 amended:

In section 2 of the principal Act, insert the following new definition in its alphabetical order:

““foreign benefitting foundation” means a Samoan foundation:

- (a) of which the founder or other person who has endowed the foundation directly or indirectly is not a resident person or resident trust; and
- (b) where the purpose cannot benefit a resident person or resident trust.”.

3. Section 12 amended:

In section 12(4) of the principal Act, substitute “section 92(7)” with “section 76A(8)”.

4. Section 76A amended:

In section 76A(1)(a) of the principal Act, substitute “section 93(8)” with “section 76B(8)”.

5. New section 76B inserted:

After section 76A of the principal Act insert:

“76B. Simplification where the foundation is not a foreign benefitting foundation:

- (1) This section applies to a foundation that is not a “foreign benefitting foundation” under the definition of “foreign benefitting foundation” under section 2, if and so long as the foundation elects by notice in writing to the Registrar the appointed individual, and the Registrar approves.
- (2) Reference to resident agent, instead of being to a Samoan licensed trustee company within the meaning of “resident agent” under section 2 of the Act, shall be to a named individual who is a full time resident of Samoa (“the appointed individual”) under this section.
- (3) The foundation shall propose in writing to the Registrar the person selected to be the appointed individual who may, at the Registrar’s absolute discretion, require the foundation then, or at any other time, any documentation and information as the Registrar may require to be satisfied that the appointed individual is, in the view of the Registrar, a fit and proper person to be the appointed individual.
- (4) If the Registrar approves the appointed individual in writing to the foundation, then the appointed individual shall fulfil in all respects the role which the resident agent would otherwise have had unless and until the Registrar notifies the foundation otherwise.
- (5) The residential address in Samoa of the appointed individual shall be the registered office of the foundation, if an appointed individual is approved by the Registrar under subsection (4).

- (6) The appointed individual may at any time, with the prior written approval of the Registrar, resign in favour of another appointed individual, who shall require to be approved under this section, or in favour of a Samoan licensed trustee company as resident agent and the resignation shall not be effective until the appointed individual or the Samoan licensed trustee approved by the Registrar has been properly appointed.
- (7) It shall be the duty of the appointed individual to notify the Registrar in writing of any change in his or her circumstances which would make him or her no longer a full time resident of Samoa or which might in the opinion of the Registrar render him or her no longer a fit and proper person to be the appointed individual and of any change in his or her residential address in Samoa.
- (8) If the appointed individual fails to comply with subsection (7), the Registrar may notify the appointed individual that he or she no longer has that role and, if a Samoan licensed trustee company is not promptly appointed resident agent of the foundation in place of the appointed individual and with the address of such resident agent as the registered office of the foundation, the Registrar may strike off the foundation from the Register.”.

6. Consequential amendment:

For Income Tax Act 2012, in subclause (2) of Part A of Schedule 2, for the definition of “foreign benefitting foundation” substitute:

““foreign benefitting foundation” has the same meaning under section 2 of the Foundations Act 2016;”.
