

SAMOA

**CUSTOMS (TOURISM AND MANUFACTURING
DEVELOPMENT) REGULATIONS 2010**

Arrangement of Provisions

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Pursuant to sections 163A and 279 of the Customs Act 1977, **I, TUI ATUA TUPUA TAMASESE EFI**, Head of State, acting on the advice of Cabinet **MAKE** the following regulations:

DATED at Apia this 17th day of May 2010.

signed: (Tui Atua Tupua Tamasese Efi)
HEAD OF STATE

REGULATIONS

1. Short title and commencement-(1) These regulations may be cited as the Customs (Tourism and Manufacturing Development) Regulations 2010.

(2) These regulations commence on the day they are made.

2. Interpretation - In these regulations, unless the context otherwise requires:

“Act” means the Customs Act 1977;

“applicant” means a person applying for approval of a qualifying project under section 163A of the Act and these regulations;

“approved person” means a person who has received approval for a “qualifying project” in regards to a particular development project under section 163A of the Customs Act 1977;

“authorised officer” means an Officer authorised by the Comptroller, the Chief Executive Officer of the Ministry of Commerce, Industry and Labour or the Chief Executive Officer of the Ministry of Finance;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry responsible for Commerce, Industry and Labour;

“Comptroller” means the Comptroller of Customs and includes any officer lawfully acting in place of the Comptroller, whether during any vacancy in the office of the Comptroller or otherwise;

“Investment Committee” means the Investment Committee made up of the Chief Executive Officers of the Ministry of Finance, Ministry for Revenue, Ministry of Commerce, Industry and Labour, Ministry of Natural Resources and Environment, Ministry of Women, Community and Social Development, the Governor of the Central Bank, the Attorney General and any other individual co-opted into the Investment Committee for the assessment of a qualifying project and approved goods;

“manufacturing development project” means a project that would contribute favourably to the social, economic and environmental well being of Samoa.

3. Criteria for “qualifying project”-(1) For the purposes of section 163A of the Act, the criteria for a qualifying project shall be determined and applied in accordance with these regulations.

(2) A qualifying project shall be limited to projects recommended by the Chief Executive Officer, and which Cabinet has advised the Minister of Finance to approve for the construction or expansion of:

- (a) a motel, hotel or beach resort; or
- (b) a manufacturing development project.

(3) For each motel, hotel or beach resort, an application shall be recommended to Cabinet for acceptance as a qualifying project if the Chief Executive Officer certifies that the applicant’s project:

- (a) is either a new development project to construct at least 12 rooms or self contained units, or is an expansion development project for the construction of at least four (4) additional rooms or two (2) additional self contained units, or is a recovery reconstruction of a development project damaged by the tsunami of 29 September 2009; and
- (b) has a capital investment in the new development project equal to or more than \$1 million tala as confirmed in writing by the Chief Executive Officer of the Ministry of Finance; and
- (c) will be of benefit to the economy of Samoa; and
- (d) is in the public interest; and
- (e) is to be conducted by an approved person with a business licence issued under the Business Licences Act 1998; and

- (f) has a principal objective to provide short term tourist accommodation and not long term accommodation leases such as apartments and flats; and
 - (g) is not a development project for the construction of beach fales; and
 - (h) is, where appropriate, consistent with the Tourism Development Plan approved from time to time by the Samoa Tourism Authority.
- (4) In the case of each motel, hotel or beach resort, no application shall be recommended to Cabinet for acceptance as a qualifying project for a recovery reconstruction of a development project due to damage from the tsunami of 29 September 2009 after 31 December 2012.
- (5) For each manufacturing development project, an applicant shall be granted the status of a qualifying project if the Chief Executive Officer certifies that the applicant's project:
- (a) has a principal objective of manufacturing, processing, or assembling products for domestic markets and markets outside of Samoa; and
 - (b) will benefit the economy of Samoa; and
 - (c) is in the public interest; and
 - (d) is to be conducted by an approved person with a business licence issued under the Business Licences Act 1998.

4. Application for qualifying project-(1) A person who seeks to obtain exemption from duty under section 163A of the Act must first make an application to the Chief Executive Officer.

(2) The Chief Executive Officer shall process and assess all applications and prepare a written report of his or her findings and recommendations to the Investment Committee.

(3) Acting on the report and recommendations of the Chief Executive Officer, the Investment Committee shall assess all applications and make a suitable recommendation to Cabinet.

(4) Where the proposed project directly relates to the tourism industry, a representative of the Samoa Tourism

Authority shall be co-opted into the Investment Committee during the assessment of such project.

(5) An application made under these regulations shall contain such particulars as may be required by the Chief Executive Officer and shall include:

- (a) the full name, address and present occupation or main business of the applicant, and, if the applicant is a public or private company, full details regarding the officers and shareholders of the company and its registered office; and
- (b) the full names of the principals or intended directors, their addresses, bank and other financial references, previous background and experience in the product to be manufactured or provided, or services to be rendered; and
- (c) the nature of the applicant's project, the resulting product or service, the anticipated volume of operation during each of the first 10 years of production, where and how the product or service is to be marketed, and the price at which the applicant expects to be able to market the product or service; and
- (d) the number of existing businesses in Samoa producing a similar product and their annual production levels, if known; and
- (e) the estimated sources, amounts, from cash or otherwise and purposes of the capital intended to be expended on the qualifying project during each of the first 10 years of production; and
- (f) a description and estimation of the cost of physical structures to be erected or added, and of capital equipment to be purchased; and
- (g) any building materials, plant, machinery, and other articles which the applicant claims will be required for the qualifying project, and which they seek to be allowed to obtain wholly or partly free of customs duty and as to each of

them whether it will be wholly or only partly used for those purposes and, if only partly used, the extent of such part use; and

- (h) the locality in which the qualifying project will be situated, and the site where any structures will be erected, including architectural plans, and approvals in writing for that locality and site from the Planning and Urban Management Agency; and
- (i) the nature of the land title applying to that site held or expected to be obtained by the applicant, and if an applicant's project is to be built upon customary land, a copy of the relevant lease agreement; and
- (j) the terms and conditions under which workers will be employed, including salaries, wages and any provision for amenities and housing of the workers, and the numbers of Samoans and of other workers intended to be employed initially, and during each of the first 10 years of production, and a description of the duties of such employees; and
- (k) the arrangements proposed for apprenticeships or for other training of Samoan workers, so as to increase the proportion of such workers to be employed in the applicant's project; and
- (l) the date on or before which it is expected that –
 - (i) work on the project is to commence; and
 - (ii) marketable quantities of the product are intended to be manufactured or otherwise produced, or the service intended to be rendered; and
- (m) an estimated product cost analysis including operating costs, and a copy of a product or service marketability survey; and

- (n) for a motel, hotel and beach resort, an architectural plan for the proposed project so as to ascertain the total number of units or rooms to be constructed; and
- (o) such other information as the Chief Executive Officer may require.

(6) An application recommended for approval shall be referred by the Investment Committee to Cabinet who shall then advise the Minister of Finance to approve under section 163A of the Act.

(7) Despite any other regulation, Cabinet or the Minister of Finance may refuse to approve the application for qualifying project if they are of the opinion that the granting of the approval will affect the revenue of Government to a degree that is not in the national interest, or for any other reason.

5. Criteria for “approved goods”-(1) For the purposes of Section 163A of the Act, approved goods shall be limited to the goods specified in subregulations (2) and (3) and approved subject to requirements and conditions provided in regulations 6 and 7.

(2) Approved goods in respect of a motel, hotel or beach resort are capital goods used solely for a qualifying project and are limited to the following:

- (a) construction materials, equipment and tools used in the construction of buildings and plants;
- (b) office amenities and other office equipment;
- (c) vessels of any kind to be used solely by guests at the hotel, motel or beach resort;
- (d) sporting goods and equipment used solely for marine and water sports and gymnasiums used by guests at the hotel, motel or beach resort;
- (e) fixtures, fittings and furniture;
- (f) plant equipment required for water and sewerage treatment plants.

(3) Approved goods in respect of a manufacturing development project are capital goods used solely for a qualifying project and are limited to the following:

- (a) plant, equipment and building materials;

- (b) goods used solely for converting or processing raw materials;
- (c) imported raw materials.

6. Application for “approved goods”-(1) An approved person who seeks to import any approved goods in respect of a qualifying project under section 163A of the Act must first submit an application to the Chief Executive Officer in accordance with these regulations.

(2) All applications shall be assessed by the Investment Committee who shall advise the Chief Executive Officer to:

- (a) recommend accepting the application for approved goods in whole or in part; or
- (b) decline the application; or
- (c) seek further details if required.

(3) Where the proposed project directly relates to the tourism industry, a representative of the Samoa Tourism Authority shall be co-opted into the Investment Committee during the assessment of such project.

(4) All applications made under these regulations shall contain such particulars as may be required by the Comptroller and the Chief Executive Officer, and shall include:

- (a) a full list of goods to be imported; and
- (b) sufficient information or description of goods such as the harmonised system description so as to assist in determining the applicable tariff rate; and
- (c) a detailed description of proposed use of goods; and
- (d) written confirmation that the goods are being imported solely to be used on a qualifying project; and
- (e) an undertaking that the full duty payable for the goods shall be paid if they are later sold within Samoa, or used by any person other than the approved person for any other purpose.

(5) An application recommended for approval by the Chief Executive Officer shall be referred to the Chief Executive Officer of the Ministry of Finance for consideration under section 163A of the Act.

(6) Despite any other provision in these regulations, the Chief Executive Officer of the Ministry of Finance may refuse to approve in whole or in part the application for approved goods if he or she is of the opinion that the granting of the approval in whole or in part will affect the revenue of Government to a degree that is not in the national interest, or for any other reason.

7. Conditions and restrictions for goods imported under section 163A-(1) Import duty concessions granted under section 163A of the Act may be granted subject to the following conditions:

- (a) every approved person shall in respect of each qualifying project carried on by that person keep, to the satisfaction of the Comptroller and the Chief Executive Officer -
 - (i) full records and accounts of all financial transactions, assets, liabilities and funds; and
 - (ii) full records and inventories of all items imported by them into Samoa; and
 - (iii) full records and inventories of all products manufactured, produced, processed or assembled by them; and
 - (iv) full records and inventories of all stocks of products held by them; and
 - (v) full records of all products exported by them from Samoa, or sold or disposed of within Samoa;
- (b) where the qualifying project relates to an expansion of a current business operation, the records, accounts and affairs of the matters referred to in paragraph (a) and which relate to expansion shall

be kept wholly separate from the original business activities at all times;

- (c) all approved goods imported for a qualifying project shall be kept in a secure manner and shall be subject to conditions that may be imposed by an authorised officer to ensure the security of the stored approved goods;
- (d) upon the granting of an approval for a qualifying project, all approved goods for the construction of that project must be imported into Samoa within 24 months from the date of the commencement of construction of the qualifying project unless extended in writing by the Chief Executive Officer of the Ministry of Finance;
- (e) any authorised officer shall be entitled during reasonable hours to enter and inspect the premises where a qualifying project is or has been conducted, and to inspect and take copies of the records pertaining to that project for the purpose of ascertaining whether the provisions of this regulation are being complied with;
- (f) for a motel, hotel or beach resort, construction work on the qualifying project must commence within three (3) months from the date the first shipment of approved goods is imported into Samoa;
- (g) for office amenities or other office equipment, fixtures, fittings and furniture, sporting goods, and plant equipment, such approved goods can only be granted duty assistance on one (1) occasion only during the establishment of qualifying project, and must arrive in Samoa within one (1) year from the date approval was given for the qualifying project;
- (h) for a manufacturing development project, the finished products manufactured at the plant must be sent overseas within 12 months from the date the approved goods were released by the

Ministry for Revenue, unless decided otherwise by the Chief Executive Officer of the Ministry of Finance;

- (i) for any class of approved goods identified by the Chief Executive Officer, the Chief Executive Officer of the Ministry of Finance may fix a minimum or maximum value calculated on a per item basis as a total value of any proposed shipment of the goods for any type of goods before being eligible for duty assistance;
 - (j) for construction equipment and tools including heavy plant and machinery, such goods may be re-exported by the approved person -
 - (i) after completion of the construction of the qualifying project; or
 - (ii) if required by the Chief Executive Officer of the Ministry of Finance;
 - (k) all customs duties are due and payable to the Ministry for Revenue for all construction equipment and tools including heavy plant and machinery, that are not re-exported by the approved person when the construction of the project is completed;
 - (l) for a manufacturing development project, duty relief may only be considered for imported raw materials if such materials are not available locally or such other reason as determined by the Chief Executive Officer of the Ministry of Finance;
 - (m) any other condition for any approved goods that the Chief Executive Officer of the Ministry of Finance deems appropriate.
- (2) An authorised officer may be authorised in writing by the Chief Executive Officer or the Comptroller to inspect the premises and records pertaining to a particular qualifying project or projects generally.

(3) No approved goods with exemption or relief from any duty under Section 163A of the Act shall be sold, given away or otherwise disposed of except:

- (a) with the prior written approval of the Chief Executive Officer of the Ministry of Finance; or
- (b) where an assignee of a business acquires the approved goods as part of the assignment; or
- (c) upon the approved person or relevant assignee as the case may be paying to the Comptroller customs duty on the value of the article sold, given away or otherwise disposed of, as assessed at the date of the sale, gift or other disposal, less any customs duty already paid for the approved goods and not refunded.

(4) Duty previously exempted under section 163A of the Act shall become due and payable if an approved person or relevant assignee as the case may be within five (5) years of commencement of its operation or receiving import duty exemption or any other longer time frame as may be determined by the Chief Executive Officer:

- (a) ceases business operations; or
- (b) fails to meet the criteria or conditions provided in these regulations; or
- (c) the requirement or condition upon which import duty assistance was initially granted has not been complied with.

(5) Any person importing approved goods in respect of a qualifying project under Section 163A of the Act who fails to comply with any of the provisions of these regulations, or who obstructs an authorised officer while that officer is carrying out or attempting to carry out an inspection authorised by regulation 7(1)(d) of these regulations commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding one (1) year or to a fine not exceeding 500 penalty units, or both.

8. Offences-(1) Any person who, otherwise than in accordance with these regulations, sells or disposes of or possesses or uses any approved goods imported under section 163A of the Act for use in relation to a qualifying project commits an offence, and shall be liable upon conviction to imprisonment for a term not exceeding one (1) year or to a fine not exceeding 500 penalty units, and the goods shall be forfeited.

(2) Any person who knowingly supplies any false or misleading information in relation to any application made under these regulations commits an offence, and shall be liable upon conviction to imprisonment for a term not exceeding one (1) year or to a fine not exceeding 500 penalty units, and the goods shall be forfeited.

(3) Any person who contravenes any of the provisions of these regulations shall be guilty of an offence and on conviction shall be liable to a fine not exceeding 250 penalty units.

(4) Where at any time a body corporate commits an offence under these regulations with the consent of, connivance by or because of neglect by, any individual, the individual commits the same offence if at that time the individual is a director, manager or other officer of the body corporate, or the individual is purporting to be acting as a director, manager or other officer of the body corporate.

(5) Lack of knowledge that the offence was being committed may be raised as a defence by the individual who commits any offence under subregulation (4).

Issued under the authority of the Regulations Ordinance 1953.

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These Regulations are administered by the Ministry for Revenue.

**Copies of these Regulations can be purchased from
the Office of the Clerk of the Legislative Assembly.**

**Printed by the Clerk of the Legislative Assembly,
by authority of the Legislative Assembly.**