

TRUSTEE COMPANIES AMENDMENT BILL 2019

SAMOA

Explanatory Memorandum

Objects and Reasons:

The Bill seeks to amend the Trustee Companies Act 2017 (“principal Act”). The object of the Bill is to clarify provisions in relation to the revocation or surrender of a licence by a Trust Company Service Provider (TCSP) or Firm. Furthermore, it also provides for general amendments for consistency of references used in the Bill and also to amend the Samoan title of the principal Act to be consistent with the title approved by Cabinet.

Clauses:

- Clause 1: - provides for the short title and commencement date of the principal Act.
- Clause 2: - amends section 28 of the principal Act by inserting a new paragraph in subsection (2) and correcting references in subsection (5).
- Clause 3: - amends section 30 of the principal Act to insert a new subsection (2) to provide for the definition of “sufficient information”.
- Clause 4: - substitutes section 39 of the principal Act regarding the revocation of a licence of a TCSP or Firm by the Authority.

- Clause 5:** - inserts new section 39A in the principal Act to provide for the surrender of licence of a TCSP or Firm.
- Clause 6:** - amends section 51 of the principal Act to insert a new paragraph (14) to clarify that duties or obligations of a TCSP or vehicle under the principal Act applies to a TCSP or its vehicle that it manages before the commencement of the principal Act.
- Clause 7:** - provides for the amendment to amend the Samoan title of the principal Act.



.....

(Hon SILI Epa Tuioti)

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

TRUSTEE COMPANIES AMENDMENT BILL 2019

SAMOA

Arrangement of Provisions

1. Short title and commencement
2. Section 28 amended
3. Section 30 amended
4. Section 39 substituted
5. New section 39A inserted
6. Section 51 amended
7. Consequential amendments

2019, No.

A BILL INTITULED

AN ACT to amend the Trustee Companies Act 2017 (“principal Act”).

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

1. Short title and commencement:

This Act may be cited as the Trustee Companies Amendment Act 2019 and commences on the date of assent by the Head of State.

2. Section 28 amended:

Section 28 of the principal Act is amended as follows:

- (a) in subsection (2), delete “and” at the end of paragraph (a), substitute the full stop “.” with a semicolon “;” at the end of paragraph (b) and insert new paragraph (c) after paragraph (b) as follows:

“(c) must, for the managed TCSP, provide a management agreement to the satisfaction of the Regulator.”;

- (b) in subsection (5)(i), for “section 27(2)” substitute “sections 27(2) and 28”.

3. Section 30 amended:

In section 30 of the principal Act, renumber the current provision as subsection (1) and insert the following:

- “(2) In this section “sufficient information” refers to the customer due diligence documents that are prescribed by Regulations.”.

4. Section 39 substituted:

For section 39 of the principal Act, substitute:

“39. Revocation of licence:

- (1) The Authority may revoke a licence if the TCSP or Firm:
 - (a) has ceased to carry on trustee business or other financial services business or does not within six (6) months after the issuance of its licence commence trust business or other financial services business; or
 - (b) goes into liquidation or is wound-up or dissolved; or
 - (c) is in non-compliance with any requirements of this Act, including sections 11(2), 28, 38(1); or
 - (d) surrenders their licence under section 39A.
- (2) The Authority before revoking a licence must:
 - (a) suspend the licence pending revocation; and
 - (b) in writing, notify the TCSP or Firm of the grounds on which it intends to revoke its licence.
- (3) The Authority may, notify any creditor, client, shareholder or employee of the TCSP or Firm, and relevant regulatory authorities in Samoa or another country of its intention to revoke the licence.
- (4) Upon receipt of the notice of intention to revoke the licence under subsection (2)(b), the TCSP or Firm must:
 - (a) provide a report on the reason it has not complied with requirements of this Act, and measures it has or will take to rectify its non-compliance;
 - (b) advise the Authority on -
 - (i) how the records required by the Act will be kept;
 - (ii) who will keep the records;
 - (iii) the location of where the records will be kept;

- (iv) how the records will be made available after the relationship with the vehicles has ceased; and
 - (c) suspend operations and return its licence within 15 working days from receipt of the notice of intention to revoke, pending a decision by the Authority on the revocation of licence.
- (5) The Authority may, by notice in writing, require a TCSP or Firm to provide any other information as it deems necessary for the purpose of subsection (4).
- (6) Where the TCSP or Firm has complied with subsections (4) or (5), the Authority will review the report and make a decision whether to proceed to revoke the licence.
- (7) If the Authority decides not to revoke the licence, the Authority must notify the TCSP or Firm and may impose conditions, before the return of the licence to the TCSP or Firm.
- (8) If the Authority decides to revoke the licence, it must notify the TCSP or Firm that its licence has been revoked. The revocation of licence takes effect on the date of service on TCSP or Firm of the notice of revocation of the licence.
- (9) Upon the lapse of 15 working days and the TCSP or Firm has not complied with subsections (4) or (5), the Authority shall revoke the licence, and publish in the Savali or its Office Website the revocation of the TCSP or Firm's licence.
- (10) A TCSP or Firm that fails to comply with this section is liable to a monetary sanction prescribed under section 45.

- (11) The revocation of a TCSP or Firm's licence does not eliminate the liability of a person identified in subsection (4)(b)(ii) to keep and make available upon the Authority's request the records for seven (7) years after the TCSP or Firm's business has ceased.
- (12) For the purposes of this section, a "licence" means a TCSP Licence, Trust Licence, Service Licence or a Managing Licence that has been issued to a TCSP or Firm under the Act."

5. New section 39A inserted:

"39A. Surrender of licence:

- (1) A TCSP or Firm may seek approval of the Authority in written notice to surrender its licence under section 39(1)(d) in no less than 30 working days before the ceasing of business.
- (2) A written notice must contain:
 - (a) true and full disclosure of reasons for the surrender of the licence;
 - (b) the date the TCSP or Firm intends to cease business;
 - (c) measures taken by the TCSP or Firm to advise vehicles of its intention to surrender its licence;
 - (d) advise on procedures on -
 - (i) how the records required by the Act will be kept;
 - (ii) who will keep the records;
 - (iii) the location of where the records will be kept;and

- (iv) how the records will be made available after the relationship with the vehicles has ceased.
- (3) The Authority upon receipt of the written notice:
 - (a) must assess the information and may require that the TCSP or Firm provide further information as it deems necessary;
 - (b) may, notify any creditor, client, shareholder or employee of the TCSP or Firm, and relevant regulatory authorities in Samoa or another country of the written notice; and
 - (c) upon thorough assessment and being satisfied that the TCSP or Firm has satisfied the requirements of subsection 2(2), must write to the TCSP or Firm of its approval to surrender its licence.
- (4) The TCSP or Firm must return its licence within 15 working days upon receipt of approval to surrender its licence.
- (5) The Authority upon return of the licence from the TCSP or Firm shall revoke the licence.
- (6) Upon the lapse of 15 working days and the TCSP or Firm has not complied with subsection (4), the Authority shall revoke the licence, and publish in the Savali or its Office Website the revocation of the TCSP or Firm's licence.
- (7) The revocation of a TCSP or Firm's licence does not eliminate the liability of a person identified in subsection (2)(d)(ii) to keep and make available upon the Authority's request the records for seven (7) years after the TCSP or Firm's business has ceased.

- (8) A TCSP or Firm that fails to comply with this section is liable to a monetary sanction prescribed under section 45.
- (9) For the purpose of this section, “licence” means a TCSP Licence, Trust Licence, Service Licence or a Managing Licence that has been issued to a TCSP or Firm under this Act.”.

6. Section 51 amended:

After section 51(13) of the principal Act, insert:

- “(14) To avoid any doubt, any prescribed requirement, duty or obligation relating to a TCSP or its vehicles under this Act, applies to a TCSP or its vehicles that it manages before the commencement of this Act.”.

7. Consequential amendments:

- (1) The Samoan translation of the Trustee Companies Act 2017 is amended as follows:
 - (a) for the title “Kamupani Tausi Mavaega” substitute “Kamupani Tausi Mavaega mo Auaunaga Tau Mavaega ma Auaunaga Tau Tupe Faava o Malo”; and
 - (b) in section 1(1), for “Kamupani Tausi Mavaega” substitute “Kamupani Tausi Mavaega mo Auaunaga Tau Mavaega ma Auaunaga Tau Tupe Faava o Malo”.
- (2) Any references to “Kamupani Tausi Mavaega 2017” in any other enactments or any other legal instruments is to be amended to be read as “Kamupani Tausi Mavaega mo Auaunaga Tau Mavaega ma Auaunaga Tau Tupe Faava o Malo 2017”.
