

TRUSTS AMENDMENT BILL 2016

SAMOA

Explanatory Memorandum

1.0 **Object and reasons:**

- 1.1 The Bill seeks to amend the Trusts Act 2014 (“principal Act”).
- 1.2 The objects of the Bill are:
 - (a) to re-define the definition of “foreign benefitting trusts” to remove reference to a “citizen of Samoa”. If that person becomes a resident in Samoa, he/she will be subject to tax in Samoa;
 - (b) to insert new section 51A to include a provision which relates to further additions of property to a Samoan International Special Trust Arrangement (SISTA);
 - (c) to amend section 63 of the principal Act to provide combination of trust with limited partnerships;
 - (d) to amend section 80(2) of the principal Act to address instances whereby if a request is properly and legally made for information in respect of a Double Taxation Agreement (DTA) or Tax Information Exchange Agreement (TIEA) then, subject to the provisions of the DTA or TIEA, the information must be provided;

- (e) to insert the new section 80A to the principal Act to provide that, where the trustee or one of the trustees of a Samoan trust is either a trust corporation or a natural person, who is a tax resident of Samoa, that trustee is required to obtain and retain such accounting and other information concerning the trust as may be required under the laws of Samoa.

Clauses:

- Clause 1:** - provides for the short title and commencement provisions.
- Clause 2:** - amends section 2 of the principal Act by substituting the definition of “foreign benefitting trust”.
- Clause 3:** - inserts new section 51A in relation to additions to SISTAs to deal with addition of property.
- Clause 4:** - amends section 63 of the principal Act to combine trusts with limited partnerships.
- Clause 5:** - amends section 80(2) of the principal Act to provide that a trustee must provide accurate information on a status and amount of the trust property and the administration of it if it is required under a Double Taxation Agreement or Tax Information Exchange Agreement properly made.

- Clause 6:** - inserts new section 80A of the principal Act in relation to obtaining and retaining of information by a trustee of a Samoan Trust who is a tax resident in Samoa.



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(Hon SILI Epa Tuioti)

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

TRUSTS AMENDMENT BILL 2016

SAMOA

Arrangement of Provisions

1. Short title and commencement
2. Section 2 amended
3. New section 51A inserted
4. Section 63 substituted
5. Section 80 amended
6. New section 80A inserted

2016, No.

A BILL INTITULED

AN ACT to amend the Trusts Act 2014 (“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 Trusts Amendment Act 2016.
- (2) This Act commences on the date of assent by the Head of State.

2. Section 2 amended:

In section 2 of the principal Act; for the definition of “foreign benefitting trust” substitute:

““foreign benefitting trust” means a trust:

- (a) of which the proper law is the Law; and
- (b) of which a trust corporation is a trustee; and
- (c) which is not created by a person who is a tax resident in or of Samoa; and
- (d) which has no tax resident in or of Samoa as a beneficiary or as one of the beneficiaries;”.

3. New section 51A inserted:

After section 51 of the principal Act insert:

“51A. Additions to SISTAs:

- (1) This section, shall apply to trusts that comply with the provisions of section 48 and section 51(7).
- (2) If a person adds any property to the trust, which has been accepted as an addition to the trust by the trustees, with the condition that the property is to be added by the trustees and treated as property of the company, of which the designated shares are issued, that property is treated as the property of the company.

- (3) If a person adds any property to the company, of which the designated shares are issued, then, unless there is an express provision to the contrary with regard to the addition, the person is taken to have added that property to the trust, which, subject to, section 25, has been accepted as an addition to the trust by the trustees.
- (4) The protections granted to the trustees under sections 49 to 62 apply to the property added under this section.”.

4. Section 63 substituted:

For section 63 of the principal Act substitute:

“63. Combination of a trust with a limited partnership:

- (1) This section applies if either:
 - (a) the trust property of a Samoan trust is the beneficial interest of a limited partner in a limited partnership, whether governed by the Law or by foreign law; or
 - (b) the trustees of a Samoan trust are entitled directly or indirectly to such an interest.
- (2) If this section applies:
 - (a) the trustee has no duty -
 - (i) to diversify the interest; or
 - (ii) to consider the investments or business of the limited partnership; and

- (b) the powers of the trustee are subservient to those of the general partner of the limited partnership; and
- (c) the trustee is not liable for any loss directly or indirectly caused to the trust property by reason of the management and control if the limited partnership by the general partner of that limited partnership.”.

5. Section 80 amended:

In section 80(2) of the principal Act, for paragraph (a) substitute:

- “(a) as required under any Double Taxation Agreement or Tax Information Exchange Agreement or the Law, if the request is made pursuant to and subject to the Double Taxation Agreement, or the Tax Information Exchange Agreement or the Law; or
- (aa) to the court; or”.

6. New section 80A inserted:

After section 80 of the principal Act, insert:

“80A. Obtaining and retaining information:

- (1) If any of the trustees of a Samoan trust is a relevant person who is a tax resident in Samoa, the relevant person shall obtain and retain in Samoa any accounting or other information concerning the trust as required by the Law.
- (2) If a Samoan trust does not have a trustee who is:
 - (a) a relevant person; and
 - (b) a tax resident in Samoa,

the trustee or trustees of the Samoan trust shall appoint a trust corporation as their resident agent (“resident agent”) in Samoa for the Samoan trust.

- (3) The resident agent shall comply with subsection (1).
- (4) A relevant person or a resident agent who fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding 100 penalty units.
- (5) A trustee who is not a relevant person and a tax resident in Samoa who fails to comply with subsection (2) commits an offence and is liable to a fine not exceeding 100 penalty units.
- (6) In this section, “relevant person” means a natural person or a trust corporation.”.
