

UNIT TRUST OF SAMOA LOANS BILL 2013

SAMOA

Explanatory Memorandum

SUMMARY

The purpose of this Bill is to facilitate borrowing from the Unit Trust of Samoa (UTOS) established under the Unit Trusts Act 2008.

Under section 75 of the *Public Finance Management Act 2001* (PFMA) it is unlawful for Government to borrow or for any bank or person to lend any money to the Government except as provided by that Act or any other Act. To enable Government to borrow from UTOS the Bill authorizes Government to borrow in accordance with any terms and conditions agreed to between the parties, in addition to the provisions for general borrowing under section 81 of the PFMA. The sum amount that can be borrowed from the Fund is determined by the Minister in clause 3(2) and an agreement between the parties is legally valid and enforceable under clause 4. Clause 5 clarifies the receipt and expenditure of such loan money so that the purpose for which it is borrowed is 'statutory expenditure'. Clause 6 deals with arbitration procedures should a dispute arise.

Clauses:

- Clause 1:** - provides the short title and commencement.
- Clause 2:** - interprets the terms used in the Act.
- Clause 3:** - authorises the Government to borrow from UTOS.
- Clause 4:** - provides that agreements between the Government and the Fund are legally valid and enforceable and the implementation of obligations under such agreements.

- Clause 5:** - provides that the purpose of the loan shall be statutory expenditure.
- Clause 6:** - provides for the arbitration procedure to be adopted.



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(Hon FAUMUINA Tiatia Faaolatane Liuga)
MINISTER OF FINANCE

UNIT TRUST OF SAMOA LOANS BILL 2013**SAMOA**

Arrangement of Provisions

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| 1. Short title and commencement | 4. Implementation of obligations under agreements |
| 2. Interpretation | 5. Statutory expenditure |
| 3. Authority to borrow from UTOS | 6. Arbitration |

2013, No.

A BILL INTITULED

AN ACT to provide for the raising of loans and credits from the Unit Trust of Samoa and for related matters.

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

1. Short title and commencement-(1) This Act may be cited as the Unit Trust of Samoa Loans Act 2013.

(2) This Act commences on the date of assent by the Head of State.

2. Interpretation - In this Act, unless the context otherwise requires:

“Government” means the Government of Samoa;

“Minister” means the Minister responsible for Finance;

“UTOS” means the Unit Trust of Samoa established under the Unit Trusts Act 2008.

3. Authority to borrow from UTOS-(1) For the purposes of section 75 of the Public Finance Management Act 2001, the Government may borrow from UTOS in accordance with an agreement to that effect between the Government and UTOS (Loan Agreement).

(2) Despite section 78(1) of the Public Finance Management Act 2001, the sum of money that may be borrowed under subsection (1) may be determined by the Minister.

(3) The amount of the loan within the limit set by this Act, the rate of interest, the date or dates upon which the money is to be repaid, and the other terms and conditions of the loan, shall be as determined between the Government and UTOS in the Loan Agreement.

(4) The Loan Agreement shall be in the name of the Independent State of Samoa and any document required to be signed evidencing the terms of the loan may be executed by the Minister or a person authorised in writing by the Minister.

4. Implementation of obligations under agreements-

(1) Despite anything contained in any other enactment, an agreement concluded between Samoa and UTOS in respect of sums borrowed by Samoa from UTOS, and any bond, promissory note, or other instrument issued pursuant to any such agreement, shall be valid and enforceable and have full force and effect in Samoa in accordance with its terms.

(2) Without prejudice to the generality of the provisions of subsection (1):

- (a) no stamp duty or tax or duty shall be payable on such agreement or on any bond, promissory note, or other instrument issued pursuant to any such agreement;
- (b) the principal of the loan obtained shall be repayable and the interest and other money and charges thereon shall be payable without deduction for and free from liability for income tax or any other tax, and free from any currency or exchange control restrictions.

5. Statutory expenditure - All money received by the Government under the Loan Agreement shall be paid into such special purpose account as may be agreed between the Government and UTOS and such money shall only be expended for the purposes for which it was borrowed and shall be charged to that account and shall be statutory expenditure.

6. Arbitration - If any dispute between UTOS and the Government arises under an agreement concluded in the exercise of the powers conferred by this Act or under any bond, promissory note, or instrument issued pursuant to any such agreement, it shall be determined by arbitration in the manner provided in the General Conditions applicable to the Loan Agreement that is the subject of the dispute, notwithstanding the provisions of any other law to the contrary.
