

# SENSIBLE ACCESIBLE MODERN OPTIMUM APPROPRIATE

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Samoa's international financial centre was established in 1987 as the Office of the Registrar for Foreign and International Companies under the auspices of the Central Bank of Samoa. The Samoa International Finance Authority (SIFA) was set up in 2005 to provide international financial services, with the enactment of the *Samoa International Finance Authority Act 2005*. The idea was and is to attract clients who are hunting for a jurisdiction that provides wealth management products and services.

## **THE TRUSTEE COMPANIES ACT 2017: A NEW PERSPECTIVE**

Until recently, trustee companies were provided for and regulated under the old *Trustee Companies Act 1987*, with only one type of trustee licence available to firms that wanted to offer financial services to the world from their bases in Samoa. The old Act required trusts to hold substantial capital stocks without the need for insurance. As the result of far-reaching changes in the financial world, Samoa enacted its new *Trustee Companies Act* in 2017. This repealed the old Act and set out new ways in which trustee companies and international firms could use Samoa's international financial services.

Although in the past Samoa has concentrated on international business companies (IBCs), the *Samoa Trustee Companies Act 2017* now provides an attractive platform for clients who want to set up offices for all manner of purposes in Samoa with the aim of using the jurisdiction as a base from which to conduct international business. The new law contains rules for recordkeeping, the identification of customers and the

verification of beneficial ownership and accounting information that conform to the most recent standards issued by the Organisation for Economic Co-operation and Development (OECD) and the Asia Pacific Group (APG), the regional chapter of the global anti-money-laundering Financial Action Task Force (FATF). Samoa's adherence to these international standards is a sure sign of its ability to move with the times. The *Trustee Companies Act* is also, more importantly, Samoa's response to the commercial needs of members of various professions who operate all over the world.

The Act offers the practitioner three types of trustee company licence, all of which impose competitive capital requirements and capitalisation in their different ways.

The first type of licence is a financial services licence which enables the holder to conduct incorporation services. The second type of licence is a trust licence which enables the holder to provide trust services. The third type of licence is a composite licence which enables the holder to provide both financial and trust services.

Legal person or trust companies that do not wish to set up offices in Samoa can ask to be given managing licences. A Samoan law firm or accountancy firm can hold one of these and administer a TCSP. Samoa has about twenty seven (27) law firms and eight (8) accountancy firms. This option is ideal for legal persons or trust companies that wish (at reasonable administrative cost) to set up trust businesses in Samoa and obtain the added benefit of efficiency and ease of doing business.

The *Trustee Companies Act* provides for the establishment of private trustee companies, which are exempt from licensing as long as they satisfy the appropriate conditions. *Section 10* protects law firms and trust service providers from some of the consequences of legal action by requiring them to take out policies to insure against that eventuality.

The *Samoa Trustee Companies Act* is the first piece of legislation to adopt and incorporate the Standard of Best Practice that GIFCS (the Group of International Finance Centres Supervisors) published in 2014. The observance of that well-respected standard ensures that trust company service providers will strive to provide the most up-to-date solutions for clients' problems and needs.

The different types of licence that the Act makes available, its insurance-related requirements and the sensible level of capitalism that its demands have already helped many clients who are looking for an alternative, stable and efficient jurisdiction to find their way to Samoa.

## **SAMOAN TRUSTS: A COMPARATIVE ANALYSIS**

Samoa has provided trust solutions since 1988, the reinvention of its *Trust Act 2014* which repealed the old *Trustee Companies Act 1988*.

Under the *Samoa Trusts Act 2014*, Trusts can be either 'charitable' or 'for a purpose'. Even more exciting, the Act has established a special type of trust called the Samoa International Special Trust Arrangement (SISTA).



Samoa's trust law is unique in that trust documents can be in any language as long as a proper English translation is provided. It provides the right amount of protection for assets against foreign succession rules or claims in foreign matrimonial proceedings. Asset protection is governed by a "two-year rule" that dictates that if the creation of the trust in question and any disposition to the trust takes place more than two years after the relevant creditor's cause of action arises against the settlor (the creator of the trust), the trust and the assets transferred to it are protected from the creditor's claim.

A Samoan trust can continue indefinitely or it can last for a fixed period, according to the wish of the settlor. If the settlor has designed it to last for a fixed period, the trustee can lengthen or shorten that period and can even change the trust to make it continue indefinitely. If the settlor has designed the trust to continue indefinitely, the trustee can subsequently change it to last for a fixed period. A Samoan trust can accumulate income throughout its duration.

The provisions for both a protector and an enforcer of a Purpose Trust

are as good as in any other jurisdiction. Trustees have a statutory duty of care that they must observe in their exercise of certain powers. This duty is included in every trust deed and is particularly helpful and reassuring for the beneficiaries who read it. These Samoan provisions follow those in the UK and Singapore. Samoa law contains detailed provisions that concern investment, delegation, the use of nominees and custodians, insurance and the remuneration of trustees.

*Section 45* of the Act of 2014 says that a reservation of powers and rights to a settlor in a trust does not invalidate that trust as long as the trust is "not a sham" or "there is such an excessive reserve of powers to the settlor that the role of the trustee and the nature of the trust is compromised." Subject to that section, the settlor may arrogate a wide variety of powers to himself, including the power to revoke the trust; to do various things with its capital; to remove a director or officer of any corporation that the trust owns; to give binding directions to the trustee in connection with the trust property; to appoint or remove any trustee, enforcer, protector or beneficiary; to appoint or remove an investment manager or advisor; and to change the proper law of the trust.

These powers are extremely wide and compare well with those found in the laws of the Cayman Islands, Dubai, Jersey and Labuan.

There are also provisions for "prescribed directions" of the kind that a settlor can give to a trustee when that settlor possesses reserved powers. The Trustee is protected if he/it complies with such directions and this is a unique feature of trust law in Samoa.

There are other ways in which one can ensure that a settlor and others keep control of a Samoan trust. It can be done through the use of a Private Trust Company or PTC, which may be owned, for example, by members of the settlor's family, or by a Purpose Trust, or by a company limited by guarantee or by a Special Purpose International Company, which is unique to Samoa. The law surrounding PTCs is similar to that of Singapore and is as good as that of any other jurisdiction.

The Samoa International Special Trust Arrangement (SISTA) is similar to the Virgin Islands Special Trusts Act (VISTA) and to the Labuan Special Trust (LST). The objective of a SISTA is to permit a Samoan trust to hold and not diversify the shares of a Samoan

company and let persons other than the trustees act as directors of that company, without the trustees being at risk for that reason.

Another structure exists that combines a trust with a limited partnership. This enables a Samoan trust to hold the interest of a limited partner in a limited partnership as an asset and permits the general partner, who is required by limited partnership law to control day-to-day business and hold the assets for the partners of the limited partnership in the ratio in which they share the capital of that partnership, to do the same thing without putting the trustees at risk. Samoa is unique in having a law of this kind. This law, moreover, does not confine the structure to one jurisdiction but rather allows the limited partnership and any companies involved to be formed in any jurisdiction. Also, since the trustees do not hold the actual assets but merely an indirect interest in them, they cannot misappropriate anything.

## THE INNOVATIVE NATURE OF SAMOAN FOUNDATIONS

Samoa provides foundations through the *Samoan Foundations Act 2016*. The foundation is a civil-law concept and Samoa is a common-law jurisdiction, but Samoa introduced foundations into its laws to widen its target market to take in clients from civil-law jurisdictions.

A Samoan foundation is a registered legal entity which owns its own assets. Its charter and rules and other documents that relate to it can be in any language as long as a proper English translation is provided as well.

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Each foundation must have a founder who gives it some initial assets. Its charter can reserve powers and rights to the founder, who can assign the benefit of them to someone else. Any assignee of those powers and rights can, in turn, assign them onwards. A Samoan Foundation must by law have a purpose, which can include an imperative to pay beneficiaries. It can have notifiable beneficiaries (who can receive information about the foundation) and non-notifiable beneficiaries (who cannot). It might sometimes appoint a guardian to protect the interests of the latter.

A Samoan trust and a Samoan foundation protect their assets from expropriation in more or less the same manner. In this regard, the claim of one of the founder's creditors whose cause of action against the founder arises more than two years after the time when he created the foundation, or when he transferred assets to it, cannot extend to the assets of the foundation. Other rules protect the assets of a Samoan foundation against foreign rules of succession and foreign judgements; these, too, are largely the same as the rules that protect the assets of Samoan trusts.

## LOOKING FORWARD TO THE FUTURE

Samoa has always endeavoured to revise its products and services to ensure that they are relevant to the changing needs of clients and operate in line with international standards. In doing so, it will always seek to remain a **Sensible, Accessible, Modern, Optimum and Appropriate** jurisdiction.

Samoa is the leading IFC in the South Pacific Region. Both the World Bank and the International Monetary Fund have hailed it as the model economy for the Pacific Region. Samoa has endeavoured to keep abreast of international developments by sending people to renowned international finance conferences around the world. Additionally, Samoa IBFC has spoken at various international seminars, predominantly in Asia, with the aim of promoting the jurisdiction.

Samoa's suite of international products and services includes trusts, trustee companies, international companies, international banks, international insurance, segregated-fund international companies, mutual funds, special-purpose international companies, foundations, partnership and limited partnerships.

*\*For more information about Samoa please visit our website at [www.samoajibfc.ws](http://www.samoajibfc.ws) or email [enquiries@samoajibfc.ws](mailto:enquiries@samoajibfc.ws) or telephone +685 66412.*

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