

**TULAFONO O TEUTEUGA O LE TULAFONO
O FAAPUTUGA OA FAAVAE RESITALAINA 2019**

Examine and Certified



Clerk of the Legislative Assembly

The Head of State Assents this.....*1st*.....day of

.....*JULY*.....*2019*.....


HEAD OF STATE

SAMOA

Faatulagaina o Aiaiga

1. Igoa puupuu ma le amataga
2. Ua teuteuina le fuaiupu 2
3. Ua teuteuina le fuaiupu 12
4. Ua teuteuina le fuaiupu 76A
5. Ua faaofiina le fuaiupu 76B fou
6. Teuteuga faatupulaia

2019, Nu. 19

**O SE TULAFONO e teuteu ai le Tulafono o Faaputuga Oa Faavae Resitalaina
2016 ("Tulafono autu").**

UA FAIA e le Fono Aoao Faitulafono a Samoa i totonu o le Palemene ua potopoto e faapea:

1. Igoa puupuu ma le amataga:

- (1) E mafai ona taua lenei Tulafono o le Tulafono o Teuteuga o le Tulafono o Faaputuga Oa Faavae Resitalaina 2019.
- (2) O lenei Tulafono e amata faamamaluina i le aso e tuuina i ai le maliega a le O Le Ao o le Malo.

2. Ua teuteuina le fuaiupu 2:

I totonu o le fuaiupu 2 o le Tulafono autu, ia faaofi le faamatalaga fou lenei i lona faasologa i le pi faitau faa-Peretania:

“faaputuga oa faavae mai fafo e faamanuiaina ai” o lona uiga o se faaputuga oa faavae Samoa:

- (a) lea sa foai ai faameaalofa i le faaputuga oa faavae i se faiga tuusao pe lē tuusao foi, e le tagata na faavaeina po o se isi tagata, o ia lea e le o se tagata nofomau po o se mavaega tausī i totonu o le atunuu; ma
- (b) pe afai o le faamoemoe e lē mafai ona faamanuiaina ai se tagata nofomau po o se mavaega tausī i totonu o le atunuu.”

3. Ua teuteuina le fuaiupu 12:

I totonu o le fuaiupu 12(4) o le Tulafono autu, ia suia le “fuaiupu 92(7)” i le “fuaiupu 76A(8)”.

4. Ua teuteuina le fuaiupu 76A:

I totonu o le fuaiupu 76A(1)(a) o le Tulafono autu, ia suia le “fuaiupu 93(8)” i le “fuaiupu 76B(8)”.

5. Ua faaofiina le fuaiupu 76B fou:

I le tuanai ai o le fuaiupu 76A o le Tulafono autu, ia faaofi e faapea:

“76B. Faafaigofieina pe afai o le faaputuga oa faavae e le o se faaputuga oa faavae mai fafo e faamanuiaina ai:

- (1) O lenei fuaiupu e faaaogā i se faaputuga oa faavae e le o se “faaputuga oa faavae mai fafo e faamanuiaina ai” i lalo o le faamatalaga o “faaputuga oa faavae mai fafo e faamanuiaina ai” i lalo o le fuaiupu 2, pe afai ma ona pau lava o lea ua filifilia e le faaputuga oa faavae e ala i se faasilasilaga tusitusia i le Resitara, le tagata e toatasi ua tofia, ma ua faamaonia e le Resitara.
- (2) O le faasinomaga i se sooupu nofomau, ae le o faasino i se kamupani tausī mavaega Samoa ua laiseneina, e tusa ai ma le uiga o le “sooupu nofomau” i lalo o le fuaiupu 2 o le Tulafono, e tatau ona faia i se tagata e toatasi ua taua lona igoa, o ia lea o se tagata nofomau o Samoa i taimi uma (“o le tagata e toatasi ua tofia”) i lalo o lenei fuaiupu.
- (3) O le a tatau i le faaputuga oa faavae ona fautuaina le Resitara i se faiga tusitusia, le tagata ua filifilia o le a avea ma tagata e toatasi ua tofia, o ia lea e mafai, i le pule faitalia lē mafesiligia a le Resitara, ona manaomia loa le faaputuga oa faavae po o i so o se isi lava taimi, o so o se pepa aloaia ma faamatalaga e pei ona mafai ona manaomia e le Resitara ina ia faamalieina ai e faapea o le tagata e toatasi ua tofia e, i le manatu o le Resitara, o se tagata ua talafeagai ma le lelei e ao ona avea ma tagata e toatasi ua tofia.
- (4) Afai e faamaonia e le Resitara le tagata e toatasi ua tofia, i se faiga tusitusia i le faaputuga oa faavae, ona tatau lea i le tagata e toatasi ua tofia ona faataunuuina i itu taua uma, le matafaioi lea e ono mafai ona faia e le sooupu nofomau i se isi faiga e ese ai, ae vagana ai ma seia logoina e le Resitara le faaputuga oa faavae i se isi faiga e ese ai.
- (5) O le tuatusi nofomau i Samoa o le tagata e toatasi ua tofia e tatau ona avea ma ofisa resitalaina o le faaputuga oa faavae, pe afai ua faamaonia e le Resitara se tagata e toatasi ua tofia, i lalo o le faafuaiupu (4).

- (6) E mafai e le tagata e toatasi ua tofia, i so o se taimi, faatasi ai ma le uluai faamaoniga tusitusia a le Resitara, ona faamavae ae tuuavanoa i le isi tagata e toatasi ua tofia, o ia lea e tatau ona manaomia ina ia faamaonia i lalo o lenei fuaiupu, po o i le itu e manuia ai se kamupani tausī mavaega ua laiseneina a Samoa e avea ma sooupu nofomau ma o le faamavaega o le a lē tatau ona aloaia seia vagana ua talafeagai lelei ona tofia ma faamaonia e le Resitara, le tagata e toatasi e tofia po o le tausī mavaega ua laiseneina a Samoa.
- (7) O le a tatau ona avea ma tiute tauave o le tagata e toatasi ua tofia, le logoina o le Resitara i se faiga tusitusia, i so o se suiga i tulaga aliae mai ia te ia, lea e ono lē toe avea ai o ia ma tagata nofomau a Samoa mo le taimi atoa, po o i le manatu o le Resitara e ono lē toe avea ai o ia ma tagata talafeagai ma le lelei e ao ona avea ma tagata e toatasi ua tofia ma o so o se suiga i lona tuatusi nofomau i totonu o Samoa.
- (8) Afai ua lē mafaia e le tagata e toatasi ua tofia ona tausisia le faafuaiupu (7), e mafai e le Resitara ona logoina le tagata e toatasi ua tofia e faapea ua le o toe ia te ia lea matafaioi ma, afai e le i tofiaina lelei se kamupani tausī mavaega a Samoa ua laiseneina e avea ma sooupu nofomau a le faaputuga oa faavae e suitulaga i le tagata e toatasi na tofia ma faatasi ai ma le tuatusi o sea sooupu nofomau e avea ma ofisa resitalaina o le faaputuga oa faavae, e mafai e le Resitara ona aveese le faaputuga oa faavae mai totonu o le Tusi Resitala.”.

6. Teuteuga faatupulaia:

Mo le Tulafono o Lafoga o Tupe Maua 2012, i totonu o le faafuaiupu (2) o le Vaega A o le Faamatalaga 2, mo le faamatalaga o le “faaputuga oa faavae mai fafo e faamanuiaina ai” ia suia e faapea:

“faaputuga oa faavae mai fafo e faamanuiaina ai” e i ai lona uiga tutusa i lalo o le fuaiupu 2 o le Tulafono o Faaputuga Oa Faavae Resitalaina 2016;”.

FOUNDATIONS AMENDMENT ACT 2019

SAMOA

Arrangement of Provisions

1. Short title and commencement
2. Section 2 amended
3. Section 12 amended
4. Section 76A amended
5. New section 76B inserted
6. Consequential amendment

2019, No. 19

AN ACT to amend the Foundations Act 2016 (“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 Foundations Amendment Act 2019.
- (2) This Act commences on the date of its assent by the Head of State.

2. Section 2 amended:

In section 2 of the principal Act, insert the following new definition in its alphabetical order:

““foreign benefitting foundation” means a Samoan foundation:

- (a) of which the founder or other person who has endowed the foundation directly or indirectly is not a resident person or resident trust; and
- (b) where the purpose cannot benefit a resident person or resident trust.”.

3. Section 12 amended:

In section 12(4) of the principal Act, substitute “section 92(7)” with “section 76A(8)”.

4. Section 76A amended:

In section 76A(1)(a) of the principal Act, substitute “section 93(8)” with “section 76B(8)”.

5. New section 76B inserted:

After section 76A of the principal Act insert:

“76B. Simplification where the foundation is not a foreign benefitting foundation:

- (1) This section applies to a foundation that is not a “foreign benefitting foundation” under the definition of “foreign benefitting foundation” under section 2, if and so long as the foundation elects by notice in writing to the Registrar the appointed individual, and the Registrar approves.
- (2) Reference to resident agent, instead of being to a Samoan licensed trustee company within the meaning of “resident agent” under section 2 of the Act, shall be to a named individual who is a full time resident of Samoa (“the appointed individual”) under this section.
- (3) The foundation shall propose in writing to the Registrar the person selected to be the appointed individual who may, at the Registrar’s absolute discretion, require the foundation then, or at any other time, any documentation and information as the Registrar may require to be satisfied that the appointed individual is, in the view of the Registrar, a fit and proper person to be the appointed individual.
- (4) If the Registrar approves the appointed individual in writing to the foundation, then the appointed individual shall fulfil in all respects the role which the resident agent would otherwise have had unless and until the Registrar notifies the foundation otherwise.
- (5) The residential address in Samoa of the appointed individual shall be the registered office of the foundation, if an appointed individual is approved by the Registrar under subsection (4).

- (6) The appointed individual may at any time, with the prior written approval of the Registrar, resign in favour of another appointed individual, who shall require to be approved under this section, or in favour of a Samoan licensed trustee company as resident agent and the resignation shall not be effective until the appointed individual or the Samoan licensed trustee approved by the Registrar has been properly appointed.
- (7) It shall be the duty of the appointed individual to notify the Registrar in writing of any change in his or her circumstances which would make him or her no longer a full time resident of Samoa or which might in the opinion of the Registrar render him or her no longer a fit and proper person to be the appointed individual and of any change in his or her residential address in Samoa.
- (8) If the appointed individual fails to comply with subsection (7), the Registrar may notify the appointed individual that he or she no longer has that role and, if a Samoan licensed trustee company is not promptly appointed resident agent of the foundation in place of the appointed individual and with the address of such resident agent as the registered office of the foundation, the Registrar may strike off the foundation from the Register.”.

6. Consequential amendment:

For Income Tax Act 2012, in subclause (2) of Part A of Schedule 2, for the definition of “foreign benefitting foundation” substitute:

““foreign benefitting foundation” has the same meaning under section 2 of the Foundations Act 2016;”.
