

# BENEFITS & SPECIAL FEATURES OF A SAMOAN TRUST

## THE TRUSTS ACT 2014

The *Trusts Act 2014* (“the Act”) is one of Samoa’s newest innovation in its quest to provide exceptional wealth management solutions.

### LANGUAGE

The Trust can be in any language provided there is a proper English translation: This is unique to Samoa

### PROTECTION AGAINST FOREIGN SUCCESSION LAWS

There are provisions preventing the enforcement of foreign judgments in Samoa with regard to succession rights under foreign laws or claims in foreign matrimonial proceedings. These provisions are as good as those in any other jurisdiction.

### THE TIME DURING WHICH A TRUST CONTINUES

A Samoan Trust can be perpetual or it can last for a fixed period. If it lasts for a fixed period, then this can be shortened or lengthened or the Trust can be changed to be perpetual. If the Trust is perpetual, then it can be changed to last for a fixed period. There is a total flexibility, only one other jurisdiction offers this.

### TRUSTEES’ POWERS

Provision is made for the statutory duty of care to be observed by Trustees in the exercise of certain powers. The Settlor and the Beneficiaries know the standard of care which a Trustee must exercise. There are specific and detailed powers concerning investment, delegation, the use of nominees and custodians, insurance and the remuneration of Trustees. Only 3 other jurisdictions offer this.

### ASSET PROTECTION

There is a 2 period from the time the date on which the creditor’s cause of action arose against the Settlor of the Trust to the time when the Settlor created the Trust or disposed of assets to the Trustees. If the Trust is created or the disposition takes place after that period, the assets are protected. This is a sensible period, being neither too short and thus open to criticism or failure nor too long to be impractical.

### PARTIES TO THE TRUST

Detailed provisions are made for both a Protector and an Enforce (of a Purpose Trust). There are specific and useful default powers exercisable by a Protector, which will apply unless the Trust provides otherwise. These are as good as in any other jurisdiction.

### RESERVATION OF POWERS

Wide reserved powers to a Settlor are permitted and are as good as only other jurisdiction. A Protector can be given any reserved powers. There is also provision for “prescribed directions”, which can be given by anyone to a Trustee. The Trustee is protected if it complies with such directions. This is unique to Samoa. These reserved powers are together wider than in any other jurisdiction.



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### RETENTION OF CONTROL

#### ***Samoa International Special Trust Arrangement (“SISTA”)***

This special arrangement permits the Trustees of a Samoan Trust to hold and not diversity the shares of a Samoan company and let others than the Trustees act as directors of the company, without the Trustees being liable for what the directors do or fail to do. Only two (2) other jurisdictions offer this solution.

#### ***Trust combined with a Limited Partnership***

The Trustees of a Samoan Trust can hold as an asset the interest of a Limited Partner in a Limited Partnership and permit the General Partner, who is required by Limited Partnership Law to control day to day (as well as hold the assets for the partners of the Limited Partnership in the ration in which they share the capital of the Limited Partnership) to do that without the Trustees being at risk. Samoa is unique in having legislated for this. This solution does not confine the structure to one jurisdiction (like SISTA) but rather the Limited Partnership and any companies involved can be formed in any jurisdiction. Also, since the Trustees do not hold the actual assets but merely an indirect interest in them, so they cannot misappropriate anything.

### POWERS TO OBTAIN INFORMATION

Case law has rendered the difficult question of who can receive what information about a Trust. There is a need for statutory guidelines to provide certainty. Samoa provides modern and useful guidelines for this, and these are as good as or better than any other jurisdiction. Otherwise Samoa Trust Law requires confidentiality.

### TYPES OF TRUST

(apart from SISTA there are several specific types of Trust)

#### **Charitable Trusts**

Many jurisdictions have Trusts which are dedicated to the benefit of charity. Samoa is no exception but there are three important factors:

- i. Definition of charity is the widest available
- ii. The Settlor can enforce the Trust while he is alive and capable of doing so and thus can ensure that the charities he wishes to benefit to do so.
- iii. If the charitable purpose fails and the Settlor is then alive, he can receive the assets back.

#### **Purpose Trusts**

These are trusts for purposes rather than persons and thus they have to have an Enforcer to enforce the purpose. As with other jurisdictions, Samoa permits such trusts to be for a purpose or purposes alone or for persons and/or charity. If the purpose comes to an end another purpose can take over or persons or charity can benefit. These provisions are as good as those in any other jurisdiction.

**NOTE: This Memorandum is provided for your assistance but you should always take professional advice before acting. Circumstances and needs differ considerably from one person and family to another.**