



SAMOA

## FRUSTRATED CONTRACTS ACT 1975

### Arrangement of Provisions

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## FRUSTRATED CONTRACTS ACT 1975

1975

No.3

AN ACT pertaining to the frustration of contracts

*[Assent and commencement date: 11 August 1975]*

**1. Short title and commencement** – (1) This Act may be cited as the Frustrated Contracts Act 1975.

(2) This Act comes into force on a date to be appointed by the Head of State, acting on the advice of Cabinet, by Order.

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

“Court” means, in relation to a matter, the Court or arbitrator by or before whom the matter falls to be determined.

**3. Application of Act** – (1) This Act applies to all contracts, whether made before or after the commencement of this Act, except contracts in respect of which the times of discharge were before 1 November 1944.

(2) This Act applies to contracts to which the Government is a party in the same manner as it applies to contracts between other persons.

(3) Where a contract to which this Act applies contains a provision that, on the true construction of the contract:

- (a) is intended to have effect in the event of circumstances arising which operate or would, but for that provision, operate to frustrate the contract; or
- (b) is intended to have effect whether or not such circumstances arise,-

the Court shall give effect to the provision in the contract, and shall only give effect to section 4 to such extent (if any) as appears to the Court to be consistent with the provision in the contract.

(4) If it appears to the Court that any part of a contract to which this Act applies can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the Court shall:

- (a) treat that part of the contract as if it were a separate contract and had not been frustrated; and
- (b) treat section 4 as applicable only to the remainder of that contract.

(5) This Act does not apply:

- (a) to a charter party, except a time charter party or a charter party by way of demise, or to any contract (other than a charter party) for the carriage of goods by sea; or
- (b) to a contract of insurance, except as provided by section 4(5); or
- (c) to a contract to which (section 7 of the Sale of Goods Act 1975) applies (which avoids contracts for the sale of specific goods which perish before the risk has passed to the buyer), or to any other contract for the sale, or for the sale and delivery, of specific goods, where the contract is frustrated by reason of the fact that the goods have perished before the risk has passed to the buyer.

**4. Adjustment of rights and liabilities of parties to frustrated contracts**– (1) If a contract governed by the law of Samoa has become impossible of performance or been otherwise frustrated, and the parties to the contract have for that reason been

discharged from the further performance of the contract, the following provisions of this section shall, subject to section 3, have effect in relation to the contract.

(2) All sums paid or payable to a party in pursuance of the contract before the time when the parties were so discharged (in this Act referred to as the time of discharge) shall, in the case of sums so paid, be recoverable from him or her as money received by him or her for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable: **PROVIDED THAT**, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the Court may, if it considers it just to do so having regard to all the circumstances of the case, allow him or her to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred.

(3) Where a party to the contract has, by reason of anything done by any other party to the contract, in or for the purpose of the performance of the contract, obtained a valuable benefit (other than a payment of money to which subsection (2) applies) before the time of discharge, there is recoverable from him or her by the other party such sum (if any), not exceeding the value of the benefit to the party obtaining it, as the Court considers just, having regard to all the circumstances of the case and, in particular:

- (a) the amount of any expenses incurred before the time of discharge by the party who has obtained the benefit, in or for the purpose of the performance of the contract, including any sums paid or payable by him or her to any other party in pursuance of the contract and retained or recoverable by that party under subsection (2); and
- (b) the effect, in relation to the benefit, of the circumstances giving rise to the frustration of the contract.

(4) In estimating, for the purposes of the preceding provisions of this section, the amount of any expenses incurred by a party to the contract, the Court may, without prejudice to those provisions, include such sum as appears to be reasonable in

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respect of overhead expenses and in respect of any work or services performed personally by the party.

(5) In considering whether any sum ought to be recovered or retained under the preceding provisions of this section by a party to the contract, the Court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustration of the contract, become payable to that party under a contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.

(6) Where a person has assumed obligations under the contract in consideration of the conferring of a benefit by any other party to the contract on any other person, whether a party to the contract or not, the Court may, if in all the circumstances of the case it considers that it is just to do so, treat for the purposes of subsection (3) a benefit so conferred as a benefit obtained by the person who has assumed such obligations.

**5. Repeal** – The Frustrated Contracts Act 1944 (NZ) is repealed as part of the law of Samoa.

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**REVISION NOTES 2008 – 2019**

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division from 2008 to 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
  - (i) “Every” and “any” changed to “a” or “each” where appropriate
  - (ii) Present tense drafting style:
    - “shall be” changed to “is/are”
    - “hereby” removed
  - (iii) Removal of superfluous terms
    - “the generality of”

- “the expression”

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.



Lemalu Hermann P. Retzlaff  
Attorney General of Samoa

*This Act is administered by  
the Ministry of Justice and Courts Administration*

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