



SAMOA

TRADE, COMMERCE AND INDUSTRY ACT 1990

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TRADE, COMMERCE AND INDUSTRY ACT 1990 1990 No.16

AN ACT to amend, consolidate and restructure the law relating to Trade, Commerce and Industry to repeal the Economic Development Act 1965; and for associated purposes.

[Assent date: 29 August 1990]

[Commencement date: 1 October 1990]

[Section 14 commencement date: 1 October 1991]

1. Short title and commencement – (1) This Act may be cited as the Trade, Commerce and Industry Act 1990.

(2) This Act comes into force on such date as shall be specified by the Head of State by Order and different parts of this Act may be brought into force at different times.

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

“Chief Executive Officer” means the Chief Executive Officer of Trade, Commerce, and Industry;

“Department” means the Department of Trade, Commerce and Industry;

“Minister” means the Minister of Trade, Commerce and Industry.

3. Minister of Trade, Commerce and Industry – There shall be a Minister of Trade, Commerce and Industry for Samoa whose functions are to control and direct the policy of the Ministry, and who may exercise such powers as are reasonably necessary for the effective performance of the functions of the Ministry.

4. Department of Trade, Commerce and Industry – There is constituted and established a department of the Government of Samoa to be known as the Department of Trade, Commerce and Industry which under the control of the Minister is charged with the administration of this Act and any regulations to be made thereunder, together with such other functions as may be lawfully conferred upon it.

5. Principal functions of Department – (1) The principal functions of the Department are:

(a) to advise the Minister on all matters affecting the development of Samoa’s trading relationships with other countries;

(b) to represent, when appropriate and deemed necessary by the Minister, Samoa at meetings, conferences or similar gatherings where matters of trade affecting or invoicing the country are discussed or considered;

- (c) to negotiate trade agreements on behalf of the Minister;
- (d) to encourage and assist the promotion of Samoan produce and products, either in its own right or in cooperation with any organisation involved in exporting, including exhibiting at trade fairs;
- (e) to establish a Commodities Pricing and Marketing Information Unit within the department;
- (f) to facilitate the obtaining of funds for the purpose of trade development and promotion, including discussion and negotiation with aid donors;
- (g) to advise the Minister on all matters affecting the growth and development of industry, commerce and trade in Samoa and to otherwise act in the promotion of investment in Samoa;
- (h) to advise Cabinet, through the Minister, on the criteria for the development of industry and commerce to be applied in evaluating approvals under any incentives legislation for the time being in force in Samoa;
- (i) to administer any incentives legislation for the time being in force in Samoa, except where such legislation otherwise specifies;
- (j) to administer laws relating to fair trading and consumer protection and, as requested by the Minister, prepare reports on the operation of those laws and the administration of the Department's functions under them;
- (ja) to administer the Measures Ordinance 1960, and any legislation replacing it;
- (k) to promote the development of small businesses, including the setting up of a small business agency within the department to disseminate knowledge of sound business and commercial practice to Samoans and organise and administer, as necessary, courses and training;
- (l) to undertake research into any aspect of domestic trade, commerce and industry, including the conducting of surveys, gathering statistics and publishing reports from time to time;

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- (m) to evaluate investment proposals suitable for funding by the Government or aid donors suitable reports or project documents;
- (n) to facilitate the obtaining of funds for the purpose of developing the commercial sector of Samoa, including discussions with aid donors;
- (o) to liaise with the Samoan Visitor's Bureau for the development of tourism in Samoa including development of facilities for the entertainment of visitors to Samoa;
- (p)(1) to act as an agent for and on behalf of a beneficial owner of any customary land or of any interest therein who in terms of section 5 of the Alienation of Customary Land Act 1965 desires that the Minister of Lands, Survey and Environment shall grant a lease or licence of such land or of any interest therein for hotel or industrial purposes —
 - (i) to negotiate and deal with prospective leases or licensees of such customary land and interests therein for the best rental terms and conditions of a proposed lease or licence that can be obtained in the circumstances;
 - (ii) to enter into an agreement to lease or licence with a prospective lessee or licensee, which agreement shall bind upon all beneficial owners of such customary lands or interests therein;
 - (iii) to make written application in that behalf to the Director of Lands pursuant to section 5 of the Alienation of Customary and Act 1965;
 - (iv) the Department through the Minister is, for the purposes of section 6 of the Alienation of Customary Land Act 1965, deemed to be the agent of all beneficial owners of the customary lands or interests therein proposed to be leased or licensed, to whom the Director or the Financial Chief Executive Officer may account for the rent or consideration to be derived from the lease or licence of that land or interest;

- (p)(2) except as are provided in subsection(1), subsection (1) shall be subject to the Alienation of Customary Land Act 1965.
- (2) The functions of the Board are:
- (a) to be a forum where members representing the trading, commercial and industrial communities within Samoa and representatives of the Government of Samoa can freely exchange views and hold regular dialogue with the view to resolving problems that are hampering progress and restraining the advancement of trade, commerce and industry in Samoa; and
 - (b) to enquire into and to make recommendations to the Minister as to ways and means of improving facilitating and enhancing the development of trade, commerce and industry in Samoa; and
 - (c) to monitor and report regularly to the Minister as to the rate of inflow of new businesses into Samoa from overseas countries and as to the rate of growth of trading, commercial and industrial businesses in Samoa; and
 - (d) to make recommendations to the Minister as to the manner in which the Department may exercise, implement and carry out any of its principal functions as stipulated in section 5 to the best interest of the Independent State of Samoa.

5A. Trade, Commerce and Industry Board – (1) The Trade, Commerce and Industry Board is established comprising the following members:

- (a) the Minister, as Chairperson;
- (b) the Chief Executive Officer of the Ministry of Commerce, Industry and Labour;
- (c) a member to represent the Ministry of Finance;
- (d) a member to represent the Ministry of Foreign Affairs and Trade;
- (e) a member to represent Samoa Tourism Authority;
- (f) the President or a representative of the Samoa Chamber of Commerce;
- (g) the President or a representative of Samoa Association of Manufacturers and Exporters;

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(h) a member to represent the Industry Development and Investment Promotion Division of the Ministry of Commerce, Industry and Labour, who shall also act as the Chief Executive Officer of the Board.

(2) The Head of State, acting on the advice of Cabinet, appoints an appointed member.

(3) If an appointed member dies, or resigns, or is removed from office, the Head of State acting on the advice of Cabinet may appoint another person in place of that member to hold office for the balance of that member's term of office.

(4) In this Act:

“appointed member” means a member appointed as a representative under subsection (1)(b) to (g);

“Board” means the Trade, Commerce and Industry Board established by subsection (1).

5B. Terms and resignation - A member:

- (a) holds office for a term of 3 years; and
- (b) is eligible for reappointment; and
- (c) upon expiry of the term under paragraph (a), continues until reappointed or a successor is appointed; and
- (d) may resign by written notice to the Board.

5C. Removal – Cabinet, may remove an appointed member:

- (a) for disability, neglect of duty, misconduct, or bankruptcy; or
- (b) if the appointed member has left Samoa permanently; or
- (c) if the appointed member is absent from 3 consecutive meetings without the permission of the Board.

5D. Meetings – (1) The following rules apply to a meeting of the Board:

- (a) meetings are to be convened by the Board in private or public;
- (b) five members constitute a quorum;

- (c) the chairperson or (if the chairperson is absent) a member appointed by the members present, is to chair that meeting;
- (d) the chair of that meeting has a deliberative vote and a casting vote;
- (e) a decision of the majority is the decision of the Board;
- (f) the Board may regulate its own procedures, subject to this section.

(2) The Chief Executive Officer is responsible for the taking of minutes of meetings of the Board and safe keeping in a Minute Book.

5E. Allowances - A member of the Board is entitled to allowances and fees determined by Cabinet.

6. Chief Executive Officer - The Chief Executive Officer of the Ministry of Commerce, Industry and Labour appointed under the Public Service Act 2004 is the Administrative Head of the Department.

7. Delegation of Minister's powers – (1) The Minister may by writing signed by him or her either generally or particularly, delegate to the Chief Executive Officer all of the powers which are conferred upon him or her or delegated to him or her as Minister of Trade, Commerce and Industry by or pursuant to this or any other Act:

PROVIDED HOWEVER THAT this power of delegation does not include power to delegate to the Chief Executive Officer the power of the Minister under this section.

(2) Subject to any general or special discretion given or conditions attached by the Minister, the Chief Executive Officer may exercise any powers delegated to him as aforesaid in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

(3) Where the Chief Executive Officer purports to act pursuant to any delegation under this section, the Chief Executive Officer is presumed in the absence of proof to the contrary to be acting in accordance with the terms of the delegation.

(4) The delegation is revocable at will and no such delegation shall prevent the exercise of any power by the Minister.

(5) The delegation, unless revoked, continues in force according to its tenor.

(6) If the Minister by whom any such delegation has been made ceases to hold office, the delegation continues to have effect as if made by the person for the time being holding office as Minister and if the Chief Executive Officer to whom such delegation has been made ceases to hold office, the delegation continues to have effect as if made to the person for the time being holding office as Chief Executive Officer or, if there is no Chief Executive Officer in office, or the Chief Executive Officer is absent from duty, to the person for the time being lawfully directed to act in the place of the Chief Executive Officer.

8. Delegation of Chief Executive Officer's powers – (1)

The Chief Executive Officer may, by writing under his hand, either generally or particularly, delegate to any such officer of the Department or to any committee constituted or administered pursuant to this Act as he or she thinks fit all or any of the powers exercisable by him or her pursuant to any enactment including any power delegated to him or her pursuant to any enactment but not including this present power of delegation:

PROVIDED THAT the Chief Executive Officer shall not delegate any power delegated to him or her by the Minister without the written consent of the Minister.

(2) Subject to any special or general direction given or attached by the Chief Executive Officer, the officer or committee to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him or it directly by this section and not by delegation.

(3) A person or committee purporting to act pursuant to any delegation under this section is presumed in the absence of proof to the contrary, to be acting in accordance with the terms of the delegation.

(4) A delegation under this section may be made to a specified officer or to officers of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.

(5) A delegation under this section is revocable at will and no such delegation prevents the exercise of any power by the Chief Executive Officer.

(6) A delegation, until revoked, continues in force according to its tenor, even if the Chief Executive Officer by whom it was made may have ceased to hold office, and continues to have effect as if made by the successor in office of that Chief Executive Officer.

(8) All officers acting pursuant to any delegation under this section, or pursuant to powers conferred by section 9A shall, if requested by any person affected by the exercise of the power, produce proper identification of their status as an officer of the Department and, if applicable, a copy of the instrument of delegation under which they are acting.

9. Appointment of officers and staff – (1) The Public Service Commission may appoint such other officers and employees as may be desirable for the administration of this Act.

(2) All such officers and other employees of the Department shall act under the direction of the Chief Executive Officer in the exercise and performance of the powers, duties and functions conferred or imposed upon them by this or any other Act.

(3) All persons who immediately prior to the commencement of this Act were pursuant to the Public Service Act 2004 officers and employees in the Department of Economic Development shall continue to be public servants as officers and employees in the Department of Trade, Commerce and Industry.

9A. Inspection powers of officers – (1) The powers conferred by this section may be exercised for the purposes of this Act and in the discharge of functions and powers under it, and not otherwise.

(2) In this section, “officer” means an officer or employee of the Department referred to in section 8 or 9.

(3) An officer may, at any reasonable time, enter any place that he or she believes on reasonable grounds to be a place where goods are being, or have been, manufactured, prepared or supplied or that is a place where services are supplied or arranged, and may:

- (a) inspect any goods or partly manufactured goods and make such other inspections as he or she considers to be necessary;
- (b) take any goods or partly manufactured goods for which he or she pays a fair price;

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- (c) take a sample of anything from which goods are manufactured or produced at that place;
- (d) make inquiries of any person employed at that place or who has responsibility over that place; or
- (e) inspect and take copies of records required to be kept under this Act or any other law regulating or applying to the business being conducted at that place.

(4) Without derogating from any power conferred by subsection (3), the Chief Executive Officer may require the production of any accounting documents, returns, inventories or other information whether or not relating to the business of any manufacturer or trader if such information is deemed by the Chief Executive Officer to be necessary for the discharge of any power or function vested in him or her.

9B. Obstructing officers – A person who:

- (a) hinders or obstructs an officer in a manner that interferes with the performance by the officer of his or her duties;
- (b) assaults an officer;
- (c) being the occupier or person in charge of any place or land entered by an officer under a power conferred by this Act, fails to provide the officer with all reasonable facilities and assistance for the effective exercise of the officer's powers under this Act,— commits an offence and is liable upon conviction to a fine of 10 penalty units or to imprisonment of 1 year, or both.

9C. Indemnity for officers – (1) No officer is in any way liable in respect of an act done by him or her in good faith and in the performance of his or her functions or powers under this Act or any Act relating to consumer protection.

(2) This indemnity from prosecution and legal action shall have equal application to the Minister and to the Chief Executive Officer.

9D. Confidential information – (1) It is an offence for an officer to divulge confidential information obtained during the course of an investigation conducted under this Act:

PROVIDED THAT this provision does not apply to information that is:

- (a) given as evidence in proceedings taken under this Act or any law relating to consumer protection;
- (b) given by the officer as part of a report prepared for the purpose of an investigation;
- (c) a matter of public record or is otherwise in the public domain.

(2) A person who is convicted of an offence against this section is liable to a fine not exceeding 5 penalty units.

10. Divisions of the Department – There shall be within the Department such Divisions as are created by any Act of the Parliament and such further Divisions as may be required for the effective performance of the Departments functions.

11. Repealed by Act 1998, No.5.

12. Appropriations – Monies appropriated by Parliament to the use of the Department of Economic Development during the year ending on 31 December 1990 and not used by that department at the date this Act comes into force is deemed from the date this Act comes into force to have been appropriated to the use of the Department of Trade, Commerce and Industry.

13. Regulations – The Head of State, acting on the advice of Cabinet may make regulations as may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

14. Amendment to Commerce Act 1978 – The Commerce Act 1978 is amended as follows:

- (a) section 2 of that Act is amended by omitting the words “Minister of Customs” where they appear in the definition of the word “Minister” and substituting the words “Minister of Trade, Commerce and Industry”;
- (b) subsection (1) of section 3 of that Act is amended by omitting the words “Customs Department” and substituting the words “Department of Trade, Commerce and Industry”

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- (c) section 6 of that Act is amended by omitting the words “Comptroller of Customs” and substituting the words “Chief Executive Officer of Trade, Commerce and Industry”

15. Repeal of Economic Development Act 1965 and consequential General Amendments – (1) The Economic Development Act 1965 is repealed.

(2) Wherever in an Act there is a reference to the Department of Economic Development, the Minister of Economic Development or the Director of Economic Development such reference shall be read as if it were a reference to the Department of Trade, Commerce and Industry, the Minister of Trade, Commerce and Industry or the Chief Executive Officer of Trade, Commerce and Industry as the case requires.

16. Repeal of Produce Marketing Act 1977 and revocation of regulations – (1) The Produce Marketing Act 1977 is repealed.

(2) The Produce Marketing Regulations 1978 are revoked.

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 (e.g reference to Public Service Act 1977 amended to read Public Service Act 2004).
- (c) Insertion of the commencement date
- (d) References to the male gender made gender neutral
- (e) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) Present tense drafting style:
 - “shall be” changed to “is/are”
 - “shall have” changed to “has”
 - “hereby” and “from time to time” removed

- (ii) Offence provisions
 - “shall be guilty” changed to “commits”
 - “commits” changed to “is convicted of” (e.g. section 9D(2))
- (iii) Removal/replacement of obsolete and archaic terms with plain language
 - “notwithstanding” changed to “despite” and “notwithstanding that” changed to “even if”
 - “under the hand of” changed to “signed by”
 - “in the event of” changed to “if”
 - “for the purposes of” changed to “in”
- (iv) Removal of superfluous terms: “of this Act”
- (v) Rearrange the definitions under section 2 according to alphabetical order

NB: The reference to the Department and to offices and officers has not been amended but the obsolete titles have been retained. This Act requires amendment.

Section 5 (3) The *Membership and Statutory Boards Act 2001* referred to a “section 5 (3)” of this Act. However section 5 does not have a subsection (3). The correct section that should have been stated is “**section 5 (q)(3)**”. Section 5 has not been renumbered to correct this error as there is a risk of causing conflict with other Acts that make cross references to this particular section. This is better left for an extended review that is pending. Therefore this amendment is recorded as is in this revision. This error does not affect the legality of the amendment made by the *Membership and Statutory Boards Act 2001*.

The following amendments were made to this Act by the Trade, Commerce and Industry Amendment Act 2014, *No. 15*:

- *Section 5(1)(q)(1) and (3) to (8)* – deleted and substituted with *new sections 5A to 5E*;
- *Section 6* – deleted and substituted;
- References to “Secretary” for Trade, Commerce and Industry in the Act substituted with “*Chief Executive Officer*”.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry of Commerce, Industry and Labour.*
