

MEMORANDUM

regarding

the Trustees Companies Act 2017 of Samoa

1. Introduction:

- 1.1 This Act concerns Trustee Company Service Providers (“TCSPs”), which are trustee companies licensed to undertake a number of specific activities.
- 1.2 Subject to paragraph 1.5 below, there is a need for a TCSP to have a licence, which determines what that TCSP may legally do.
- 1.3 There are 3 types of licence, referred to in detail below, being a TCSP Licence, a Trust Licence and a Service Licence.
- 1.4 Any of these types of licence can be “managed” for the TCSP by another TCSP or by a firm of Samoan lawyers or accountants.
- 1.5 There are exceptions from the need for a licence for “exempt persons”, who include private trustee companies and professionals acting as trustees.
- 1.6 There are capital and insurance requirements for a licensed TCSP.
- 1.7 Powers and duties of and concerning a TCSP are provided for.
- 1.8 A number of matters are dealt with (and are referred to below) to meet modern regulatory requirements and yet enable the Samoa International Finance Authority (“SIFA”) to work with TCSPs to ensure compliance in the least intrusive manner.

2. Licences:

- 2.1 Unless there is an exempt person, there has to be a licence to legally carry out “financial services business”, which means “trust business” and any activities which constitute a TCSP. These activities are set out in the Schedule to this Memorandum. “Trust business” means “the business of a TCSP in acting as a trustee of any trust, providing management and/or administration for any such trust and undertaking any matters or acting in any way ancillary thereto.”
- 2.2 A TCSP may apply for any one of the following licences:-
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 - 2.2.1 a Trust Licence to carry out trusts business;

2.2.2 a TCSP Licence to carry out financial services business; and

2.2.3 a Service Licence to carry out financial services business, except for trust business.

2.3 Any of these licences may be “managed” so that the TCSP with the licence becomes a “managed TCSP”. The management can be by a “managing TCSP” or a “Managing Licence” can be granted to a “firm” to carry out the management.

2.4 ***If you are interested***, SIFA can provide you with information as to the requirements for an application for a licence, the Form required for the application and the detail of the particulars which you will have to provide.

3. Exceptions:

3.1 “Exempt persons” include a PTC, which can be a company or an approved foundation, the purpose of which is to carry on business as a trustee company for any specific trust if

3.1.1 each settlor of the trust is a connected person to any other settlor of that trust; and

3.1.2 each beneficiary of that trust is a connected person to the settlor of that trust or is a charity; and

3.1.3 the PTC does not solicit the public to carry on business as a trustee company nor carries on business as a trustee company for the benefit of the public.

3.2 “Connected person” has a very wide meaning in a family context.

4. Capital and insurance requirements for a licensed TCSP:

4.1 Minimum requirements are provided for by regulations.

4.2 Current regulations require that any TCSP with any licence must have adequate financial resources having regard to its business with a minimum of the higher of

4.2.1 US\$33,000; or

4.2.2 25% of the TCSP’s annual operating expenditure, being all expenditure, except for fees paid to SIFA.

4.3 The capital requirement will be monitored by and is at the discretion of SIFA

4.4 Current regulations provide that the minimum professional indemnity insurance requirements for a licensed TCSP are the lowest of the following:-

4.4.1 US\$1,000,000;

4.4.2 30 x the last total of gross annual fees and commissions from the TCSP's largest client by value of gross annual fees and commissions; and

4.4.3 3 x the last total of gross annual fees and commissions from the TCSP's financial services business or trust business, depending upon the type of licence held by the TCSP.

4.5 Notwithstanding the minimum requirement for insurance, SIFA will monitor the business of the TCSP and the terms of, and the amount of cover provided by, any insurance policy are at the discretion of SIFA. The policy must be with an insurance company approved by SIFA.

5. Some powers of or concerning a TCSP:

5.1 The powers of a trustee company under the Samoan International Companies Act 1988, of a TCSP under the Samoan Trusts Act 2014 and of a resident agent under the Samoan Foundations Act 2016.

5.2 General powers to act as a trustee, executor or administrator.

5.3 Power to act through a subsidiary or related company.

5.4 Power to delegate to a TCSP and powers of delegation by a TCSP.

5.5 Protection of a TCSP and the power for beneficiaries to indemnify a TCSP.

6. Some duties or requirements of a TCSP:

6.1 To report all relevant changes to a TCSP and to its shareholder controllers, other controllers, key persons or officers (all as defined in the Act).

6.2 To undertake professional duties and meet professional requirements.

6.3 To meet requirements of professional conduct with regard to integrity, conflicts of interest, interaction with clients, advertising and communication, terms of business and complaints handling.

6.4 To comply with requirements for maintenance of records and accounting.

- 6.5 To comply with regulations for the proper protection of data.
- 6.6 To have robust systems, procedures and controls for anti-money laundering, and for the prevention of the financing of terrorism and other financial crime and to meet all requirements in these respects.
- 6.7 To be subject to inspection, investigation, review and supervision by SIFA as may be appropriate and necessary.
- 6.8 To be subject as necessary to legal information sharing and co-operation.

Schedule
(activities which constitute a TCSP)

- (a) acting as a corporate or partnership formation agent;
- (b) acting as (or arranging for another person to act as) a director, secretary or official of a company or a partner of a partnership or as an official of a foundation;
- (c) providing administration or management of a trust, company, partnership, foundation or for any other person or legal arrangement;
- (d) providing registered office, business address for accommodation, correspondence for administrative address for a company, partnership, foundation or for any other person;
- (e) acting as a resident agent for the purposes of meeting requirements to hold beneficial ownership or interest information;
- (f) acting as (or arranging for another person to act as) a trustee of an express trust; or
- (g) acting as (or arranging for another person to act as) a nominee shareholder for another person;

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 to another.