

MEMORANDUM

The benefits and special features of

a Samoan Trust

The Trusts Act 2014

1. **Language:** The Trust can be in any language provided there is a proper English translation: This is unique to Samoa.
2. **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.
3. **Asset protection:** There is a 2 period from the time that the Settlor created the Trust or transferred assets to the Trust to the date on which the creditor's cause of action arose against the Settlor of the Trust. This is a sensible period, being neither too short and thus open to criticism or failure nor too long to be impractical.
4. **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 total flexibility, only one other jurisdiction offers this.
5. **Parties to the Trust:** Detailed provisions are made for both a Protector and an Enforcer (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.
6. **Trustees' powers:** Provision is made for a 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.
7. **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.

8. **Retention of control:**

8.1 Reserved powers have already been mentioned.

8.2 **Samoa International Special Trust Arrangement (“SISTA”):** This special arrangement permits the Trustees of a Samoan Trust to hold and not diversify 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 2 other jurisdictions offer this solution.

8.3 **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 ratio 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.

9. **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: The first is that the definition of charity is the widest available. The second is that 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 do so. The third is that, 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 a purpose or purposes and 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.

10. **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 Samoan Trust Law requires confidentiality.

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.

This Memorandum was last updated on 30th July 2015