

**MEMORANDUM**  
**proposed provisions**  
**of**  
**The Samoan Foundations Bill 2015**

1. **Form:** The Charter and Rules of a Samoan Foundation and other documents relating to the Foundation can be in any language so long as there is a proper English translation.
2. **Founder and the Founder's reserved powers and rights:** Every Foundation has a Founder, who gives the initial assets to the Foundation. The Charter can reserve powers and rights to the Founder, who can assign the benefit of them. Any assignee of the powers and rights can assign them onwards.
3. **Purpose:** A Foundation has to have a Purpose. This can include the benefit of persons, who are Beneficiaries.
4. **Beneficiaries:** There are Notifiable Beneficiaries and Non-Notifiable Beneficiaries. The former can receive information about the Foundation and the latter cannot. This is why there is a Guardian sometimes to protect the interests of Non-Notifiable Beneficiaries.
5. **Governing documents:** A Samoan Foundation, like other Foundations, is governed by its Charter and Rules (which are like the Memorandum and Articles of a company).
6. **Registration:** Like other Foundations, a Samoan Foundation is a registered legal entity, which owns its own assets.
7. **Management and control:** This is undertaken by a Council, which can appoint Officers to whom it can delegate day to day administrative functions.
8. **Supervisory Person:** Samoa provides that a Supervisory Person may be appointed in addition to the Council and to supervise it.
9. **Guardian:** Samoa provides that a Samoan Foundation has to have a Guardian where there are Non-Notifiable Beneficiaries and to provide for someone to ultimately receive the rights and powers reserved to the Founder, if no other provisions are made.

10. **Powers, Duties and Appointment:** There are clear powers and duties specified for the Council, the Supervisory Person and the Guardian and generally for Officials. Also it is made quite clear how any such person can resign, be removed and be appointed.
11. **Special types of Foundation:** There are provisions for special types of Foundation: There is a **Charitable Foundation**, which has similar benefits to a Charitable Trusts of the breadth of the definition of charitable, the ability of Founder to enforce the charitable purpose to meet his wishes and to receive back the assets if the charitable purpose fails. **The combination of a Foundation with a Limited Partnership:** This, like its counterpart with Trusts, enables a Samoan Foundation to hold the interest of a limited partner in a limited partnership and to permit the General Partner to manage and control the assets and investments of the limited partnership without the intervention of the Council or Officers of the Foundation and without any risk to them.
12. **Asset Protection:** Samoan Foundations have similar provisions for asset protection as Samoan Trusts. Thus the claim of a creditor of the Founder, whose cause of action against the Founder arises more than 2 years after the creation of the Foundation by the Founder or the transfer of assets to it by the Founder, cannot extend to the assets of the Foundation.
13. **Protection against foreign rules of succession:** There are similar provisions protecting the assets of a Samoan Foundation against foreign rules of succession and foreign judgments as there are with regard to the protection of the assets of Samoan Trusts.
14. **Winding-up:** Most Samoan Foundations will continue until they are wound up. There are clear provisions covering voluntary winding up by the Council or winding up by the Court and the grounds for both.
15. **Information:** The Register of Foundations has a Part A, containing information available to the public, and a Part B, with information and documents which are not so available.
16. **Diagram:** There is a diagram of a Foundation attached to this Memorandum.

**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 or family to another.

**This Memorandum was last updated on 30<sup>th</sup> July 2015**