



WORD FROM THE CEO

SENSIBLE
APPROPRIATE
MODERN
OPTIMUM
ACCESSIBLE

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- The salient Features of Samoan Trusts
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Talofa Lava and welcome to the first edition of the 2019 INVEST SAMOA Newsletter. Since the launch of the INVEST SAMOA newsletter, a lot has happened in Samoa both abroad as well as domestically.

The development of technology has increased the interest in, as well as a gradual shift towards establishing regulatory standards for financial technologies. This was one of the main issues discussed at a high level meeting hosted by the Central Bank of Samoa (CBS) in November 2018 attended by the Governors of the Pacific Region and representatives of international organisations. In the same month, INVEST SAMOA participated in the Society of Trusts & Estate Practitioners (STEP) Conference in Dubai and Hong Kong, where Financial Technologies (FinTech) was recognised as an emerging issue. Close examination of the opportunities and potential risks are being assessed to determine the way forward with regard to guidelines and policies for FinTech in Samoa.

Samoa has continued to take an innovative approach in expanding its suite of international financial legislation and continues to amend the same, to provide the legal platform for clients seeking a variety of international solutions. For instance, you will find a Samoan Trust (featured on page 2) is one of the

attractive solutions available, other than the international business companies, which can be utilised by clients and professionals in international estate planning for family succession and asset protection.

Samoa was one of many countries listed by the European Union (EU) despite the successful review by the Financial Action Task Force (FATF) Asia Pacific Group (APG) for AML/CFT and the OECD Global Forum on Tax, in 2015 and 2017 respectively. Samoa has allocated time, resources and efforts in order to ensure Samoa's offshore business is appropriately regulated and supervised. We continue to move forward to address these issues on a regulatory and compliance front, through legislative measures and political engagement with the EU through regional fora such as the Pacific Island Forum and the Pacific ACP, as well as through international standard setting bodies like the OECD and the APG.

The balance between regulation and innovation is paramount, and we hope you will see this in this, and subsequent issues of the INVEST SAMOA newsletter.

Please contact our team if you would like more information. We also welcome your thoughts, views and any contribution.

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SAMOAN TRUSTS: A COMPARATIVE ANALYSIS

Samoa has provided trusts solutions since 1988; the reinvention of this service through the *Trusts Act 2014* which repealed the old *International Trusts Act 1988* is another recent move by Samoa to provide up to date Trust solutions for clients seeking an alternative.

Under the *Samoan Trusts Act 2014*, Trusts can either be Charitable or for a Purpose and even more exciting is the concept of a SISTA (Samoa International Special Trust Arrangement).

An unique aspect of Samoa's Trust law is that the Trust documents can be in any **language** as long as a proper English translation is provided. Samoan Trust law provides sufficient **protection against foreign succession rules or claims** in foreign matrimonial proceedings, which are as good as in any other jurisdiction. **Asset protection** has a 2 year rule so that if the creation of the Trust and any disposition to the Trust took place more than 2 years after a creditor's cause of action arose against the Settlor (the creator of the Trust), the Trust and the assets transferred to it are protected from the creditor's claim. This is a sensible period, being neither too short, and thus open to criticism or failure, nor too long to be impractical. The **duration** of a Samoan trust is very flexible as it can continue indefinitely or it can last for a fixed period. If it lasts for a fixed period, then this period can be made longer or shorter or the Trust can be changed to continue indefinitely. If the Trust continues indefinitely, then it can be made longer or shorter or the Trust can be changed to continue indefinitely. If the Trust continues indefinitely, then it can be changed to last for a fixed period. With a Samoan trust **income can be accumulated** throughout the continuation of the Trust. The provisions for both a Protector and an Enforcer of a Purpose Trust are as good as in any other

jurisdiction. Trustees have a **statutory duty of care** to be observed in their exercise of certain powers. The statutory duty of care for Trustees is included in the Trust Deed and is particularly helpful and reassuring for Beneficiaries as it demonstrates the standard of care that Trustees must exercise. For a Samoan Trust, these provisions follow those in the UK and Singapore as well as specific and detailed powers concerning investment, delegation, the use of

“A Samoan Trust is very flexible, as it can be perpetual or it can last for a fixed period...”

nominees and custodians, insurance and the remuneration of Trustees. Wide **reservation of powers** is available under the *Samoan Trust Act 2014* which compares well with what is provided by jurisdictions such as Cayman, Dubai Jersey and Labuan. There is also provision for “**prescribed directions**”, which is what a Settlor can give to a Trustee, when the Settlor has reserved powers. The Trustee is protected if it complies with such directions and is a unique feature of Trust law in Samoa.

There are other ways to ensure **continuing control by a Settlor** and others is sustained even though there is a Trust. This can be in the form of a Reserved Power Trust or alternatively the Trustees must hold the trust property for the Beneficiaries and exercise proper control over it.

Another method is the use of a **Private Trust Company (PTC)**, which may be owned, for example, by members of the Settlor's family, or by a Purpose Trust, or by a company limited by guarantee or by a **Special International Company**, which is unique to Samoa. The PTC provisions and requirements are similar to those of Singapore and are as good as those in any other jurisdiction.

The **Samoa International Special Trust**

Arrangement (SISTA) is similar to the Virgin Islands Special Trusts Act (VISTA) and to the Labuan Special Trust (LST). The objective of a SISTA is to permit a Samoan Trust to hold and not diversify the shares of a Samoan company and let others other than the Trustees act as directors of the company, without the Trustees being involved or liable for the acts or omissions of the directors.

There is also a **structure combining a Trust with a Limited Partnership**. This enables a Samoan Trust to hold as an asset the interest of a Limited Partner in a Limited

Partnership and permits the General Partner, who is required by Limited Partnership Law to control day to day direction and management of the Limited Partnership (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), without the Trustees being liable for the acts or omissions of the same. 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, they cannot misappropriate anything.

Samoan Trusts have been designed to meet the wishes and needs of clients and their advisers for family successions, asset protection, ongoing control and other reasons for international estate planning. It is clear that the features of a Samoan Trust will provide numerous benefits for clients immediate needs and future proofing.

SAMOA TRUSTS COMPARISON

FEATURES	SAMOA	BVI	SINGAPORE	HONG KONG	LABUAN
Type of Company/Entity	Special Purpose International Companies; SISTA; Trust	Trust	Trust	Trust	Trust
Type of Law	Common Law	Common Law	Common Law	Common Law	Common Law
Time to Establish a Trust	Depends on the provision of all required information	2—3 days	Depends on complexity of structure	2—3 days	Depends on the completion of Trust Deed
Duration of Trust	Fixed period or perpetual – depends on Trust Deed	360 years	100 years	80 years	Flexible for fixed term to be converted to perpetual trust
Minimum Government Fees (excluding taxation)	No Government Fees or tax levies	Stamp Duty USD\$200	Nil	Nil	Registered Trusts: USD\$200
Trust Assets	Yes	Yes	Yes	Beyond reach of settlor's and beneficiaries creditors	Yes
Standard Currency	USD \$	USD\$	SGD\$	USD\$	Any currency except MYR
Permitted Currencies	Any lawful currency	Any	Any	Any	Any currency except MYR
Minimum assets required	Nil	Nil	SGD\$1	US\$10	USD\$1
Local Trustees required	No, except for a Samoa international Trust Arrangement (SISTA)	Trustees can be licensed BVI professional trustees, BVI exempt PTC, foreign corporate trustees or individuals	Trustee must be a Singapore licensed company or individual	No	Minimum one Trustee from Labuan Trust Company or Labuan Management Trust Company
Trusts/Limited Partnership	Yes - Samoa legislates for this structure in the <i>Trusts Act 2014, s63</i> .	Yes	Yes	Yes	Yes
Asset Protection Rule	2 years	Depends on the Trust Deed	Depends on Trust Deed	Depends on Trust Deed	Depends on Trust Deed
Publicly accessible records	No	No	No	No	No
Location of meetings	Can be held anywhere in the world	Domicile of trustees (preferred)	Singapore	Anywhere	Anywhere
Protector Required	No	Optional	Optional	Optional	Optional
Publicly accessible Trust Deed	No	No	No	No	No
Accounts: requirements to prepare	No, but accounting and other information must be retained in Samoa by a Samoan tax resident Trustee or the Registered Agent.	Yes	Yes	Yes	Yes
Audit requirements	No, unless the Trust so requires	No	Depends on the nature of the structure	No	Optional
Change in domicile permitted	Yes	Yes	Depends on Trust Deed	Depends on Trust Deed	Yes

Disclaimer: Information contained in this table is brief and general in nature and does not constitute legal or taxation advice. Appropriate legal or other professional advice should be sought for any specific matter.

FINANCIAL TECHNOLOGIES: EXPLORING ALTERNATIVES FOR SAMOA

Where ever you turn the use of technology and computer programs to enable financial services is increasing at a remarkable rate! As a result, entrepreneurs and professionals have been exploring technological avenues which are more efficient, effective and cost-saving in order to adapt to demand for on-line based financial solutions. These rapid advances in financial technology are transforming the economic and financial landscape, offering wide-ranging opportunities while at the same time raising potential risks, particularly with regards to financial stability, security and integrity.

The Samoa International Finance Authority – Regulator of international finance services recognises that regulation of the offshore financial market is a balancing act. Too little regulation and there are no rules to maintain fairness and offer investors the confidence they need to fund further innovation and growth. Too much regulation and entrepreneurs don't have the freedom they require to create and innovate. Financial Technologies (FinTech) has added to this balancing dilemma, as financial services globally try to negotiate, manage and keep up with newer technologies that, on the one hand, may improve business, but which are, on the other hand yet to be regulated.

On the domestic front, the Central Bank of Samoa (CBS) hosted the 33rd Annual Pacific Central Bank Governors' Meeting in November 2018, which provided a platform

to discuss various issues including the risks and challenges of FinTech innovations. Following discussions, National authorities are keen to foster fintech's potential benefits, mitigate the possible risks and address the appropriate changes required in current systems to facilitate fintech innovation. Nonetheless, while there is ongoing discussion in regional and international bodies regarding emerging issues in FinTech, the CBS as the Monetary Authority, continues its role in informing the public of the risks associated with crypto-currencies; a small part of FinTech innovation. One of many clear risks associated with crypto-currency was realised on a global scale in December 2018, when the founder of a Canadian cryptocurrency exchange passed away and was the only person with the password to the encrypted online storage facility, which contained up to \$190 million worth of crypto assets such as Bitcoin, Ether and other cryptos, subsequently leaving its customers and users of the online platform with very little recourse to recover their assets and investment.

In addition to cryptocurrencies, there is a growing global interest in blockchain technology which stores records of transactions or 'blocks' chronologically linked and secured cryptographically to prevent alteration. These records are visible to everyone to some extent, therefore encouraging transparency. Furthermore, there has been interest in a virtual stock exchange, currently

being assessed for the benefits, risks and challenges it holds from a regulatory perspective as well as for potential clients.

The increasing interest in the use of various FinTech solutions for financial services is clear, and its potential benefits for Samoa as an offshore jurisdiction. However it is equally important to recognise the challenges and risks associated with FinTech. In that regard, the Samoa International Finance Authority is taking a cautiously curious approach towards developments in the FinTech space.

Because of the global technology network and the international nature of financial services, this may be one of the few emerging services and sectors to have the development of a regulatory regime play out simultaneously across legal jurisdictions around the world. As jurisdictions with different regulatory philosophies, legal systems and roles in global financial services attempt to define the regulatory needs and implement them, there is an enormous risk that a patchwork of varying and conflicting rules will arise. Samoa recognizes the fast development and availability of Financial Technological services and is continuing to explore the relevant factors, not to mention the need for specialised skills to implement a robust supervisory system, before the consideration of introducing necessary legislation.

INTERNATIONAL ESTATE PLANNING: THE FUTURE IS NOW

The Offshore Financial Market is constantly changing making it a volatile environment for business. However, despite its volatile nature Jurisdictions quickly adapt and adopt best practices to provide efficient, effective and timely international solutions for clients. One of the international issues developing interest is the need for estate planning domestically as well as abroad. The rapid increase in international investments and business, and the change in the entrepreneurial mindset has brought to light the importance of addressing issues pertaining to international estate planning. As a result, there has been an increase in the demand for Professionals with general expertise in identifying and navigating the complex planning and regulatory compliance issues; both legal and tax related, involved in international estate planning.

Samoa is one of few jurisdictions that has recognised this trend and has provided international solutions under the *Trusts Act 2014* and *Foundations Act 2016* for clients who wish to structure their wealth to achieve fam-

ily succession and asset protection. It is intended that trusts and foundations will offer alternative but similar solutions, the former being unregistered and the latter registered. There are numerous benefits associated with Samoan Trusts as mentioned in this issue "Samoan Trusts: A comparative analysis", and highlighted in the Comparison Table (page 3). The benefits of a Samoan Foundation, such as asset protection, as well as the combination of a foundation with a limited partnership is also possible with Trusts. Samoa is the only jurisdiction that legislates for this kind of a structure, giving it a competitive advantage as clients and their advisers are given assurance in the absence of case law.

Recognising the increase in interest on international estate planning, INVEST SAMOA has conducted numerous local trainings for its Professionals, International Seminar Presentations as well as follow-up meetings with advisors and professionals in locations such as Hong Kong, Singapore, Dubai, and London. Following these Presentations and meetings, it is clear that

clients are becoming more astute about financial planning, and are seeking digital capabilities and better advisory options. On the regulatory front, compliance mandates make wealth management appear difficult, particularly in terms of structuring, however almost all the requirements focus on protecting the clients and their information, as well as ensuring the legal aspects are met, which only enhances the value of the solution.

The complexity of international estate planning with regard to management and addressing compliance issues, such as structuring an individual client's assets require careful consideration and modification according to each situation. In this space, the *Samoa Trusts Act 2014* and *Foundations Act 2016* provide sensible benefits and structuring for clients seeking international estate planning solutions that are tailored to the client's needs and totally in line with international regulatory requirements; striking the right balance!