

Trustee Act 1975

SAMOA

TRUSTEE ACT 1975

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TRUSTEE ACT 1975

1975 No. 11

AN ACT to consolidate and amend the law relating to trusts and trustees.

[Assent and commencement date 23 December 1975]

**PART I
PRELIMINARY**

1. Short title– This Act may be cited as the Trustee Act 1975.

2. Interpretation and application– (1) In this Act, unless the context otherwise requires:

“authorised investments” means investments authorised for the investment of money subject to the trust by the instrument, if any, creating the trust or by this Act or any other Act;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry of Finance;

“conveyance”, or “to convey” as applied to a person, includes the execution by that person of a necessary or suitable assurance for conveying, transferring, assigning, appointing, surrendering, or otherwise disposing of land wherein he or she is entitled to a right or interest, either for his or her whole estate, or for a less estate, together with the performance of all formalities required by law for the validity of the conveyance;

“Court” means the Supreme Court;

“Government securities” or “Samoa Government securities” means any securities issued by or under the authority of the Government by virtue of an Act, and secured upon the public revenues of Samoa;

“person” includes a corporation sole, and also a body of persons, whether corporate or unincorporate;

“personal representative” means the executor, original or by representation, or an administrator of a deceased person;

“property” includes real and personal property, and an estate, share, and interest in any property, real or personal, and a debt, and anything in action, and any other right or interest, whether in possession or not;

“Registrar” means the Registrar of the Supreme Court and includes a Deputy Registrar in a case where the Deputy may lawfully act for and on behalf of the Registrar;

“right” includes an estate or interest;

“securities” includes stock, funds, and shares;

“transfer”, in relation to stock or securities, includes the performance and execution of a deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee;

“trust” or “trustee” extends to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incidental to the office of a personal representative and includes the Public Trustee;

“trust for sale”, in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of a person, and with or without power at discretion to postpone the sale;

“trustee for sale” means the person (including a personal representative) holding land on trust for sale.

(2) This Act, except where otherwise expressly provided, applies to trusts (as hereinbefore defined) constituted or created either before or after the commencement of this Act.

(3) The powers conferred by or under this Act on a trustee are in addition to the powers given by the instrument, if any, creating the trust; but the powers so conferred, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

(4) This Act does not affect the legality or validity of anything done before the commencement of this Act, except as otherwise in this Act expressly provided.

3. Act to bind Government– This Act binds the Government.

PART II INVESTMENTS

4. Authorised investments– **(1)** A trustee may invest trust funds in his or her hands, whether at the time in a state of investment or not, in any investments authorised by the instrument (if any) creating the trust for the investment of money subject to the trust, or in manner following, that is to say:

(a) in any Samoa Government securities, or in any of the stock, funds, or other securities of a Commonwealth Government;

(b) on real securities in Samoa to which subsection (3) applies;

(c) on deposit in a bank;

(d) in any securities authorised for the investment of money subject to a trust by an Order of the Head of State, acting on the advice of Cabinet.

(2) Any such investments may be varied.

(3) In this section, “real security” means a first mortgage of an estate in freehold and a first sub-mortgage of such a first mortgage.

5. Loans and investments by trustees not chargeable as breaches of trust– A trustee lending money on the security of a property on which he or she can properly lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the Court:

(a) that in making the loan the trustee was acting upon a certificate or report as to the value of the property made by a person whom he or she reasonably believed to be competent to value the property;

(b) that the amount of the loan does not exceed 70% of the value of the property as stated in the certificate or report.

6. Liability for loss by reason of improper investment– If a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security is deemed an authorised investment for the smaller sum, and the trustee is only liable to make good the sum advanced in excess thereof with interest.

7. Powers in relation to company securities–(1) If any securities of a company are subject to a trust, the trustee may concur in any scheme or arrangement:

(a) for the reconstruction of the company; or

(b) for the sale of all or any part of the property and undertaking of the company to another company; or

(c) for the amalgamation of the company with another company; or

(d) for the release, modification, or variation of any rights, privileges, or liabilities attached to the securities or any of them, –

in like manner as if he or she were entitled to the securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company instead of or in exchange for all or any of the first-mentioned securities; and the trustee is not responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which he or she could have properly retained the original securities.

(2) A trustee may apply capital money subject to a trust in payment of the calls on any shares subject to the same trust.

**PART III
GENERAL POWERS AND
INDEMNITIES OF TRUSTEES**

Division 1 – General Powers

8. Powers to sell, postpone, lease and sublease– (1) Subject to this section, a trustee may exercise the following powers in respect of a property vested in him or her:

(a) sell the property;

(b) postpone the sale, calling in, and conversion of the property:

PROVIDED THAT nothing in this paragraph shall permit a trustee to postpone the sale, calling in, or conversion of a property of a wasting or speculative nature for longer than is reasonably necessary to permit its prudent realisation;

(c) let or sublet the property at a reasonable rent for a term not exceeding 1 year, or from year to year, or for a weekly, monthly, or other like tenancy, or at will;

(d) grant a lease or sublease of the property for any term not exceeding 21 years to take effect in possession within 1 year next after the date of the grant of the lease or sublease at a reasonable rent;

(e) at any time during the currency of a lease of the property, reduce the rent or otherwise vary or modify the terms thereof.

(2) If there is a power (statutory or otherwise) to postpone the sale of any land or authorised investment that a trustee has a duty to sell by reason only of a trust or direction for sale, then (subject to an express direction to the contrary in the instrument, if any, creating the trust) the trustee is not liable in any way merely for postponing the sale, in the exercise of his or her discretion, for an indefinite and unlimited period, whether or not that period exceeds the period during which the trust or direction for sale remains valid; nor shall a purchaser of the land or authorised investment be concerned in a case with any directions respecting the postponement of a sale.

9. Miscellaneous powers in respect of property– (1)A trustee may exercise the following powers in respect of a property vested in him or her:

(a) expend money subject to the same trusts for the repair, maintenance, upkeep, or renovation of the property, whether or not the work is necessary for the purpose of the salvage of the property; and (subject to the rules of law applicable in such cases and to any direction of the Court to the contrary) apportion the cost of the work between capital and income or otherwise among the persons entitled thereto in such manner as he or she considers equitable, with power, in any case where the whole or part of the cost of the work is charged to capital, to recoup capital from subsequent income if such a course would be equitable having regard to all the circumstances of the case;

(b) expend money subject to the same trusts in the improvement or development of the property;

(c) where the property is land and the land may be sold or let or leased or otherwise disposed of under a power or trust vested in the trustee, subdivide the land into sections and do all such things, and pay all such money as he or she thinks necessary or as are required by any law relating to subdivisions;

(d) pay taxes, assessments, insurance premiums, and other outgoings in respect of the property out of money subject to the same trusts;

(e) as mortgagor or mortgagee, agree to the renewal, extension, or variation of the mortgage for such period and on such terms and conditions as he or she thinks fit:

PROVIDED THAT nothing in this paragraph shall authorise a trustee to advance any money on the security of a mortgage that would not be an authorised investment in respect of the amount advanced;

(f) make such inquiries, by way of advertisement or otherwise, as he or she deems necessary for the purpose of ascertaining the next of kin or beneficiaries entitled to the property, and charge the cost of the inquiries and advertisements against the property;

(g) where the property includes a life policy and there is no money or insufficient money available for the payment of premiums on the policy, surrender the policy for money, or accept instead of the policy a fully paid up policy, or vary the terms of the policy in such manner as the trustee thinks fit;

(h) apply a part of the property in or towards satisfaction of any legacy payable there out or any share thereof (whether settled, contingent, or absolute) to which any person is entitled, and for that purpose value the whole or any part of the property;

PROVIDED THAT effectual notice thereof is to be given to all persons of full age who are interested, and any such person may within 2 calendar months after receipt of the notice apply to the Court to vary the same.

(i) where provision is made in an instrument creating a trust for payment of an annuity or other periodical payment, and despite that the annuity or payment may by the instrument be charged upon the trust property or upon a part thereof, set aside out of property available for payment of the annuity and invest a sum sufficient in the opinion of the trustee at the time of setting aside to provide out of the income thereof the amount required to pay the annuity or periodical payment, and, the residue of the trust property and the income thereof shall thereafter no longer be liable for the annuity, and may be distributed forthwith in accordance with the trusts declared of and concerning the same;

(j) do or omit all acts and things, and execute all instruments necessary to carry into effect the powers and authorities given by this Act or by or under the instrument creating the trust.

(2) If in the administration of a property employed in the production of income or from which income is derived a trustee considers that in the interests of the persons entitled or who may become entitled to the capital of the property it is equitable to set up a depreciation or replacement fund in respect of the property or in respect of any asset comprised therein, then,

despite any rule of law to the contrary, it is lawful for but not obligatory upon him or her to do so, and to credit to the fund and accumulate by way of compound interest such part of the income so produced or derived as he or she considers equitable and also the resulting income therefrom. In any such case the fund shall follow the destination of the capital of the property and is subject to all the trusts, powers, and provisions applicable thereto; with further power to the trustee to apply as he or she thinks fit the fund and accumulations of income in or towards the replacement, repair, maintenance, upkeep, or renovation of the property or asset, or in or towards the acquisition by purchase or otherwise of property or assets of a like nature or which otherwise may advantageously be employed in conjunction with the property in producing or deriving the income as aforesaid.

10. Power of trustee for sale to sell by auction, tender or contract– (1) Where a trust for sale or a power of sale of property is vested in a trustee, he or she may sell or concur with any other person in selling all or a part of the property, either subject to prior encumbrances or not, and either together or in lots, by public auction or by public tender or by private contract, subject to any such conditions respecting title or evidence of title or other matters as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind a contract for sale and to resell, without being answerable for any loss.

(2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof, and also includes a trust or power to sell or dispose of any buildings, fixtures, timber, or other things affixed to the soil apart and separately from the land itself.

11. Power to sell property on terms– (1) A sale of property by a trustee in exercise of any power vested in him or her in that behalf by the instrument creating the trust or by or under this Act or any other enactment may be on terms of deferred payment or otherwise.

(2) The terms of deferred payment are to be such as a person acting with prudence would, if the property were his or her own, have accepted in the circumstances in order to sell the property to the best advantage, and, subject thereto, may provide for the payment of the purchase money or any part thereof under an agreement for sale or for the conveyance of the property sold and the securing of the unpaid purchase money by mortgage of the property sold.

(3) For the purposes of a consent or direction required by the instrument, if any, creating the trust or by statute, a trustee selling property on terms of deferred payment is not deemed to be lending money or investing trust funds.

12. Power of trustees to give receipts– The receipt in writing of a trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him or her under a trust or power is a sufficient discharge to the person paying, transferring, or delivering the same, and shall effectually exonerate that person from seeing to the application or being answerable for any loss or misapplication thereof.

13. Power to compound liabilities– A trustee may, if and as he or she thinks fit:

- (a) accept any property, real or personal, before the time at which it is made transferable or payable; or
- (b) sever and apportion any blended trust funds or property; or
- (c) pay or allow any debt or claim on any evidence that he or she thinks sufficient; or
- (d) accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed; or
- (e) allow any time for payment of any debt; or
- (f) surrender any leasehold property subject to onerous covenants of such a nature that it would not be to the advantage of the person beneficially interested to retain the property; or
- (g) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trust or to the trust property,– and for any of those purposes may enter into, give, execute and do such agreements, instruments of composition or arrangement, releases, and other things as to him or her seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or her in good faith.

14. Power to raise money by sale or mortgage–If a trustee is authorised by the instrument, if any, creating the trust or by this Act or any other Act or by law to pay or apply capital money subject to the trust for a purpose or in a manner, he or she shall have and is deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage of all or a part of the trust property for the time being in possession.

15. Protection to purchasers and mortgagees dealing with trustees– No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under a trust or power (statutory or otherwise) vested in a trustee, is to be concerned to see that the money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.

16. Devolution of powers or trusts – (1) When a power or trust is given to or imposed on 2 or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them.

(2) Until the appointment of a new trustee, the personal representative for the time being of a sole trustee or (where there were 2 or more trustees) of the last surviving or continuing trustee, is capable of exercising or performing any power or trust which was given to, or capable of being exercised by the sole or last surviving or continuing trustee, or the other trustees of the trust.

17. Power to insure– (1) A trustee may:

(a) insure against loss or damage, whether by fire or earthquake or otherwise, a building or other insurable property to an amount, including the amount of an insurance already on foot, not exceeding the full insurable value of the building or property, or (with the consent of the person entitled to the income or of the Court) the full replacement value of the building or property; and

(b) insure against a risk or liability against which it would be prudent for a person to insure if he or she were acting for himself or herself; and

(c) pay the premiums for the insurance out of the income of the building or property concerned or out of the income of any other property subject to the same trusts without obtaining the consent of a person who may be entitled wholly or partly to that income.

(2) The trustee may recover the costs of any premiums paid in respect of any such insurance from the life tenant or other person entitled to or in receipt of the rents and profits of the building or property concerned.

(3) Nothing in this section imposes an obligation on a trustee to insure.

18. Application of insurance money where policy kept up under any trust, power, or obligation– (1) Money receivable by a trustee or a beneficiary under a policy of insurance

against the loss of or damage to a property subject to a trust, whether by fire or otherwise, shall, where the policy has been kept up under a trust in that behalf or under a power, statutory or otherwise, or in performance of any covenant or of an obligation, statutory or otherwise, or by a tenant for life impeachable for waste, be capital for the purposes of the trust, except so far as it would be regarded as income under a rule of law.

(2) If any such money is receivable by a person other than the trustee of the trust, that person shall use his or her best endeavours to recover and receive the money, and shall pay the net residue thereof, after discharging any costs of recovering and receiving it, to the trustee of the trust.

(3) Any such money:

(a) if it was receivable in respect of property held upon trust for sale, is held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under the trust;

(b) in any other case, is held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) Any such money, or a part thereof, may also be applied by the trustee, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustee is to be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust.

(5) Nothing in this section prejudices or affects the right of a person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any statute or otherwise.

(6) This section applies to policies effected either before or after the commencement of this Act, but only to money received after the commencement thereof.

19. Valuations— A trustee may, for the purpose of giving effect to the trust, or the instrument, if any, creating the trust or of this Act or any other Act, ascertain and fix the value of any trust property, or of a property which he or she is authorised to purchase or otherwise acquire, in such manner as he or she thinks proper; and where the trustee is not personally qualified to ascertain the value of a property he or she shall consult a duly qualified person (whether employed by him or her or not) as to that value; but the trustee shall not be bound to accept a valuation made by a person whom the trustee may consult. A valuation made by the trustee in good faith under this section is binding on all persons beneficially interested under the trust.

20. Power to employ agents— A trustee may, instead of acting personally, employ and pay an agent, whether a solicitor, accountant, bank, corporation, stockbroker, or other person, to transact any business or do an act required to be transacted or done in the execution of the trust or the administration of the trust property, including the receipt and payment of money, and the keeping and audit of trust accounts, and is entitled to be allowed and paid all charges and expenses so incurred, and is not responsible for the default of any such agent if employed in good faith.

21. Power to delegate trusts— (1) A trustee who is out of Samoa or is about to depart therefrom or who is or may be about to become, by reason of physical infirmity, temporarily incapable of performing all his or her duties as a trustee may, despite a rule of law or equity to the contrary, by power of attorney executed as a deed, delegate to a person the execution or exercise during his or her absence from Samoa or during his or her incapacity, as the case may be, of all or any trusts, powers, authorities, and discretions vested in him or her as such trustee, whether alone or jointly with any other person or persons:

PROVIDED THAT a person being the only other co-trustee is not appointed to be an attorney under this subsection.

(2) The power of attorney shall not come into operation unless the donor is out of Samoa or is incapable of performing all his or her duties as a trustee, and is deemed to be revoked by his or her return or by his or her recovery of that capacity, as the case may be.

(3) A statutory declaration by the donee of a power of attorney relating to a trust or estate that the power has come into operation, or that in a transaction the donee is acting in the execution of the trust or the administration of the estate, shall in favour of a person dealing with the donee of the power be conclusive evidence of that fact.

22. Power to carry on business—(1) Subject to any other Act, if at the time of his or her death a person (whether alone or in partnership) is engaged in carrying on a business, trade, or occupation, it is lawful for his or her trustee to continue to carry on the same in the same manner for any 1 or more of the following periods:

(a) three years from the death of that person;

(b) such period as may be necessary or desirable for the winding up of the business;

(c) such further period or periods as the Court may approve.

(2) In exercise of the powers conferred by this section or by the instrument creating the trust, a trustee may:

(a) employ a part of the deceased's estate which is subject to the same trusts; and

(b) increase or diminish the part of the estate so employed; and

(c) purchase stock, plant, and chattels for the purposes of the business; and

(d) employ such managers, agents, servants, clerks, workmen, and others as he or she thinks fit; and

(e) enter into a partnership agreement to take the place of any partnership agreement subsisting immediately before the death of the deceased or at any time thereafter.

(3) Application to the Court for leave to carry on a business may be made by the trustee or a person beneficially interested in the estate at any time, whether or not any previous authority to carry on the business has expired; and the Court may make such an order, or may order that the business be not carried on, or be carried on subject to conditions, or may make such other order as in the circumstances seems proper.

(4) Nothing in this section prejudices any other authority to do the acts thereby authorised to be done.

23. Power to convert business into a company— A trustee may:

(a) at any time, at the expense of the trust property, convert or join in converting any business into a company limited by shares in such manner as he or she may think fit; and

(b) at the like expense, promote and assist in promoting a company for taking over the business; and

(c) sell or transfer the business and the capital and assets and goodwill thereof, or any part thereof, to the company, or to any company having for its objects the purchase of such a business, in consideration, in either case, wholly or in part of ordinary or preference shares wholly or partially paid up of any such company, or wholly or in part of debentures, debenture stock, or bonds of any such company, and as to the balance (if any) in cash payable immediately, or by any instalments with or without security.

Division 2 – Indemnities

24. Protection against creditors by means of advertisements—(1) If a trustee has given notice by advertisement published at least once in a newspaper circulating in Samoa requiring creditors to send to the trustee, within the time fixed in the notice, particulars of their claims against or in respect of the estate of a deceased person and warning them of the consequences

of their failure to do so then at the expiration of that time or at any time thereafter the trustee may administer or transfer or distribute the property or any part thereof to which the notice relates to or among the persons entitled thereto having regard only to the claims, whether formal or not, of which the trustee then has notice; and he or she shall not, as respects the property so administered or transferred or distributed, be liable to a person of whose claim the trustee has not had notice at the time of the administration or transfer or distribution:

PROVIDED THAT nothing in this section shall prejudice a right which the person may have to follow the property or any part thereof or any property representing the same into the hands of a person who may have received it.

(2) The time to be fixed as aforesaid by any such notice shall not be less than 3 months from the date on which the notice is given.

(3) An advertisement published under this section may relate to more than 1 estate or trust property.

25. Implied indemnity of trustees –(1) A trustee is chargeable only for money and securities actually received by him or her, and is answerable and accountable only for his or her own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for a bank, or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his or her own wilful default.

(2) A trustee may reimburse himself or herself or pay or discharge out of the trust property all expenses reasonably incurred in or about the execution of the trusts or powers; but, except as provided in this Act or any other Act or as agreed by the persons beneficially interested under the trust, no trustee is allowed the costs of any professional services performed by him or her in the execution of the trusts or powers unless the contrary is expressly declared by the instrument creating the trust:

PROVIDED THAT the Court may on the application of the trustee allow such costs as in the circumstances seem just.

26. Protection of trustee in handing over chattels to life tenant– (1) If any chattels are, under the provisions of any will, bequeathed to a person for life or for any limited interest, the trustee may cause an inventory to be made of the chattels, which inventory shall be signed by that person and retained by the trustee, and a copy of the inventory shall be delivered to that person.

(2) The trustee may thereupon deliver the chattels to that person on such terms and conditions as the trustee thinks fit, and shall not thereafter be bound to see to the repair or insurance of the chattels, and shall not be subject to any liability whatsoever by reason of the loss or destruction of the chattels or the neglect of that person to effect any such repair or insurance.

Division 3 – Maintenance, Advancement, and Protective Trusts

27. Power to apply income for maintenance, or education or advancement or benefit of the income of property, and to accumulate surplus income during a minority—(1) If a property is held by a trustee in trust for a person for an interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property:

(a) during the infancy of any such person, if his or her interest so long continues, the trustee may, at his or her sole discretion, pay to his or her parent or guardian, if any, or otherwise apply for or towards his or her maintenance or education (including past maintenance or education) or his or her advancement or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is—

(i) any other fund applicable to the same purpose; or

(ii) a person bound by law to provide for his or her maintenance, education, advancement, or benefit; and

(b) if the person on attaining the age of 21 years has not a vested interest in that income, the trustee shall thenceforth pay the income of that property and of any accretion thereto under subsection (2) to him or her until he or she either attains a vested interest therein or dies, or until failure of his or her interest:

PROVIDED THAT, in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustee shall have regard to the age of the infant and his or her requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes, and where the trustee has notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the Court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

(2) During the infancy of any such person, if his or her interest so long continues, the trustee shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof in authorised investments, and shall hold those accumulations as follows:

(a) if any such person—

(i) attains the age of 21 years, or marries under that age, and his or her interest in the income during his or her infancy or until his or her marriage is a vested interest; or

(ii) on attaining the age of 21 years or on marriage under that age becomes entitled to the property from which the income arose, –

the trustee shall hold the accumulations in trust for that person absolutely, but without prejudice to a provision with respect thereto contained in a settlement by him or her made under any statutory powers during his or her infancy, and so that the receipt of that person after marriage, and though still an infant, is a good discharge; and

(b) in any other case the trustee shall, despite that that person had a vested interest in the income, hold the accumulations as an accretion to the capital of the property from which the accumulations arose and as 1 fund with that capital for all purposes, –

but the trustee may, at any time during the infancy of that person if his or her interest so long continues, apply those accumulations, or a part thereof, as if they were income arising in the then current year.

(3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing in the place of a parent to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient and subject to any rules of Court to the contrary) be 4% annum.

(4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by a trustee in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the infancy of the annuitant is to be held in trust for the annuitant or his or her personal representatives absolutely.

28. Power to apply capital for maintenance or education or advancement or benefit of a person entitled to capital of the property— A trustee may at any time or times pay or apply any capital money or other capital asset subject to a trust, for the maintenance or education (including past maintenance or education), or the advancement or benefit, in such manner as he or she may in his or her absolute discretion think fit, of a person entitled to the capital of the trust property or of a share thereof, whether absolutely or contingently on his or her attaining any specified age or on the occurrence of any other event, or subject to a gift over on his or her death under a specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and any such payment or application may be made despite that the interest of that person is liable to be debated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he or she belongs:

PROVIDED THAT:

(a) the money or asset so paid or applied for the maintenance, education, advancement, or benefit of any person shall not exceed altogether half of the presumptive or vested share or interest of that person in the trust property where the value of that share or interest exceeds \$4,000, and in any other case shall not exceed altogether \$2,000 in amount or value; and

(b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money or asset so paid or applied is brought into account as part of that share; and

(c) no such payment or application shall be made so as to prejudice a person entitled to a prior life or other interest, whether vested or contingent, in the money or asset paid or applied unless that person is in existence and of full age and consents in writing to the payment or application, or unless the Court, on the application of the trustee, so orders.

**PART IV
APPOINTMENT AND DISCHARGE OF TRUSTEES**

29. Power of appointing new trustees—(1) If a trustee (whether original or substituted, and whether appointed by the Court or otherwise):

(a) is dead; or

(b) remains out of Samoa for the space of 12 months during which no delegation of any trusts, powers, or discretion vested in him or her as such trustee remains in operation under this Act; or

(c) desires to be discharged from all or any of the trusts or powers reposed in or conferred on him or her; or

(d) refuses to act therein; or

(e) is unfit to act therein; or

(f) is incapable of so acting, —

the person nominated for the purpose of appointing new trustees by the instrument (if any) creating the trust, or if there is no such person or no such person able and willing to act, then the surviving or continuing trustees, may by deed appoint a person or persons (whether or not being the person or persons exercising the power) to be a trustee or trustees in the place of the first-mentioned trustee.

(2) On the appointment of a trustee or trustees for the whole or a part of trust property:

(a) the number of trustees may be increased; and

(b) any assurance or thing requisite for vesting the trust property, or a part thereof, jointly in the persons who are the trustees shall be executed or done.

(3) If a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed, as if he or she were dead, and this section shall apply accordingly.

(4) The power of appointment given by subsection (1) or a similar previous enactment to the personal representatives of a last surviving or continuing trustee is and is deemed always to have been exercisable by the executors (whether original or by representation) of that surviving or continuing trustee who have provided the will of their testator or by the administrator of that trustee without the concurrence of any executor who has renounced or has not proved.

(5) If a sole trustee is or has been originally appointed to act in a trust, or where, in the case of a trust, there are not more than 3 trustees either original or substituted and whether appointed by the Court or otherwise, then and in any such case:

(a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or

(b) if there is no such person, or no such person able and willing to act, then the trustee or trustees,-

may, by writing, appoint a person or persons (whether or not being the person or persons exercising the power) to be an additional trustee or additional trustees, but it is not obligatory

to appoint an additional trustee, unless the instrument, if any, creating the trust, or a statutory enactment provides to the contrary.

(6) A new trustee appointed under this section as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him or her, shall have the same powers, authorities, and discretions, and may in all respects act as if he or she had been originally appointed a trustee by the instrument, if any, creating the trust.

(7) This section relative to a trustee who is dead include the case of a person nominated trustee whether sole or otherwise in a will, and who dies before the testator; and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of this section.

(8) This section relative to a person nominated for the purpose of appointing new trustees apply whether the appointment is made in a case specified in this section or in a case specified in the instrument, if any, creating the trust, but where a new trustee is appointed under this section in a case specified in that instrument, the appointment is subject to the terms applicable to an appointment in that case under the provisions of that instrument.

30. Evidence as to a vacancy in a trust– (1) A statement contained in any instrument coming into operation after the commencement of this Act by which a new trustee is appointed for any purpose connected with land as to how a vacancy in the office of trustee occurred shall, in favour of a purchaser, of the land, be conclusive evidence of the matter stated.

(2) In favour of any such purchaser an appointment of a new trustee depending on that statement, and a vesting declaration, express or implied, consequent on the appointment, is valid.

31. Retirement of trustee– (1) If there are 2 or more trustees:

(a) if 1 of them by deed declares that he or she is desirous of being discharged from the trust; and

(b) if his or her co-trustees and such other person (if any) as is empowered to appoint trustees by deed consent to the discharge of the trustee, and to the vesting of the trust property in the co-trustees alone,—

then, subject to the provisions of subsection (3), the trustee desirous of being discharged is taken to have retired from the trust, and shall by the deed be discharged therefrom under this Act without any new trustee being appointed in his or her place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed and done.

(3) Except where only one trustee was originally appointed, a trustee shall not be discharged under subsection (1) unless there will be at least 2 individuals to act as trustees to perform the trust.

32. Discharge of trustee with assistance of Court or Registrar–(1)If a trustee is desirous of being discharged from a trust the trustee is entitled to retire therefrom on passing his or her

accounts before the Registrar, and giving a notice of retirement to his or her co-trustees (if any), and to such other person (if any) as is empowered to appoint new trustees.

(2) If such co-trustees, or such other person as aforesaid empowered to appoint new trustees, or any of them, refuse or neglect to appoint a new trustee or to consent to such appointment in place of the trustee so retiring, or if the retiring trustee is the sole trustee having power to appoint a new trustee, but the exercise of that power is impracticable or difficult without the assistance of the Court, it is lawful for the retiring trustee to apply to the Court for the appointment of a new trustee in his or her place.

(3) The Court may:

(a) upon any such application, make an order appointing some proper person as trustee in place of the trustee so desirous of being discharged from his or her trust, and direct any accounts and inquiries to be made and

(b) make an order discharging the trustee from the trust and from all liability in respect thereof; and

(c) make such order as to costs or otherwise as it thinks fit, –
and the person who upon the making of the order becomes trustee shall have the same rights and powers as he or she would have had if appointed by judgment in an action duly instituted.

(4) If on any such application the Court thinks proper to appoint the Public Trustee to be trustee instead of the retiring trustee, it is the duty of the Public Trustee to undertake the trust.

33. Vesting of trust property in new or continuing trustees– (1) If by a deed a new trustee is appointed to perform a trust, the deed, subject to a provision to the contrary therein contained, shall operate, without a conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate or interest or right that is subject to the trust.

(2) If by a deed a retiring trustee is discharged under the statutory power without a new trustee being appointed, the deed, subject to a provision to the contrary therein contained, shall, without a conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate or interest or right that is subject to the trust.

(3) An express vesting declaration, whether made before or after the commencement of this Act, shall, despite that the estate or interest or right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to an express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in subsections (1) and (2), as the case may require, such estates, interests, and rights as are capable of being and ought to be vested in those persons.

(4) Any such deed is registrable in a registry wherein a property subject to the trust is registered.

34. Advisory trustees may be appointed to assist responsible trustee– (1) In the administration of a trust property a trustee may act, to the extent hereinafter provided, with an

advisory trustee.

(2) An advisory trustee may be appointed in respect of all or a part of the trust property:

(a) by the testator, settler, or other creator of the trust, in the instrument creating the trust; or

(b) by order of the Court made on the application of a beneficiary or trustee or of a person on whose application the Court would have power to appoint a new trustee; or

(c) by a person having power to appoint a new trustee.

(3) If a trustee acts with an advisory trustee the trust property is to be vested in the first-mentioned trustee (hereafter in this section referred to as the responsible trustee), who shall have the sole management and administration of the estate and its trusts as fully and effectually as if the trustee were the sole trustee:

PROVIDED THAT:

(a) the responsible trustee may consult the advisory trustee on any matter relating to the trusts or the estate;

(b) the advisory trustee may advise the responsible trustee on a matter relating to the trusts or the estate, but is not to be a trustee in respect of the trust;

(c) when an advice or direction is tendered or given by the advisory trustee, the responsible trustee may follow the same and act thereon, and is not liable for anything done or omitted by him or her by reason of his or her following that advice or direction;

(d) if the responsible trustee is of opinion that such advice or direction conflicts with the trusts or a rule of law, or exposes him or her to a liability, or is otherwise objectionable, he or she may apply to the Court for directions in the matter, and the decision and order therein is final and binds the responsible trustee and the advisory trustee, and the Court may make such order as to costs as appears proper:

PROVIDED THAT nothing in this paragraph makes it necessary for the responsible trustee to apply to the Court for any such directions.

(e) if advisory trustees are not unanimous, and tender to the responsible trustee conflicting advice or directions, the responsible trustee may similarly apply to the Court for directions.

(4) No person dealing with the responsible trustee in relation to a trust property is concerned to inquire as to the concurrence or otherwise of the advisory trustee, or be affected by notice of the fact that the advisory trustee has not concurred.

(5) Subject to the provisions of the instrument (if any) creating the trust and to an order made by the Court, in a case where remuneration is payable to the trustee of a trust property, remuneration or commission may be paid to both the responsible trustee and the advisory trustee.

(6) Nothing prevents the Public Trustee from accepting appointment or acting as trustee in respect of a trust property in respect of which an advisory trustee is appointed under this section.

**PART V
POWERS OF THE COURT**

Division 1 – Appointment of New Trustees

35. Power of Court to appoint new trustees– (1) The Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the Court, make an order appointing a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees or although there is no existing trustee.

(2) Without prejudice to subsection (1), the Court may make an order appointing a new trustee in substitution for a trustee who:

(a) has been held by the Court to have misconducted himself or herself in the administration of the trust; or

(b) is convicted of an offence involving dishonesty; or

(c) is a mentally defective person; or

(d) is a bankrupt.

(3) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(4) Nothing in this section gives power to appoint an executor or administrator.

(5) A trustee appointed by the Court shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him or her, have the same powers, authorities, and discretions, and may in all respects act as if he or she had been originally appointed a trustee by the instrument, if any, creating the trust.

Division 2 – Vesting Orders

36. Vesting orders of property– (1) Subject to subsections (2) and (3), in any of the following cases, namely:

(a) if the Court appoints or has appointed a trustee, or where a trustee has been appointed out of Court under a statutory or express power;

(b) if a trustee entitled to or possessed of a property, whether by way of mortgage or otherwise, either solely or jointly with any other person—

(i) is under disability; or

(ii) is out of the jurisdiction of the Court; or

(iii) cannot be found;

(c) if it is uncertain who was the survivor of 2 or more trustees jointly entitled to or possessed of any interest in property;

(d) when it is uncertain whether the last trustee known to have been entitled to or possessed of an interest in property is alive or dead;

(e) if there is no personal representative of a deceased trustee who was entitled to or possessed of an interest in property, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of an interest in property;

(f) if a deceased person was entitled to or possessed of an interest in property and his personal representative is under disability;

(g) if a trustee jointly or solely entitled to or possessed of an interest in property, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the property or interest or a release of the right, to convey the property or interest or to release the right, and has wilfully refused or neglected to convey the property or interest or release the right for 28 days after the date of the requirement;

(h) if property or an interest therein is vested in a trustee whether by way of mortgage or otherwise, and it appears to the Court to be expedient,—
the Court may make an order (in this Act called a vesting order) vesting the property or interest therein in any such person in any such manner and for any such estate or interest as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct.

(2) If any such order is consequential on the appointment of a trustee, the property or interest therein shall be vested for such estate as the Court may direct in the persons who on the appointment are the trustees.

(3) If any such order relates to a trustee entitled or formerly entirely jointly with another person, and that trustee is under disability or out of the jurisdiction of the Court or cannot be found, the property, interest, or right is to be vested in the other person who remains entitled, either alone or with any other person that the Court may appoint.

37. Orders as to contingent rights of unborn persons— If an interest in land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of that interest on a trust, the Court may make an order releasing the land or interest therein from the contingent right, or may make an order vesting in a person the estate or interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

38. Vesting order consequential on order for sale or mortgage of land – When the Court gives a judgment or makes an order directing the sale or mortgage of any land, a person who:

(a) is entitled to or possessed of an interest in the land, or entitled to a contingent right therein; and

(b) is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, –
mistaken to be so entitled or possessed, as the case may be, as a trustee for the purposes of this Act, and the Court may, if it thinks expedient, make an order vesting the land or a part thereof for such estate or interest as the Court thinks fit in the purchaser or mortgagee or in any other person.

39. Effect of vesting order– A vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a trustee, have the same effect:

(a) as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate or interest as the Court directs; or

(b) if there is no such person or no such person of full age and full mental capacity, as if such person had existed and been of full age and full mental capacity and had duly executed all proper conveyances of the land for such estate or interest as the Court directs, –
and shall in every other case effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the provisions respectively relate had been an ascertained and existing person of full age and full mental capacity and had executed a conveyance or release to the effect intended by the order.

40. Power to appoint person to convey– In all cases where a vesting order can be made under any of the foregoing provisions, the Court may, if it is more convenient, appoint a person to convey the land or an interest therein or release the contingent right, and a conveyance, or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

Division 3 – Jurisdiction to Make Other Orders

41. Power of Court to authorise dealings with trust property and variations of trust– (1) Subject to section 2(3), where in the management or administration of a property vested in a trustee, any sale, lease, mortgage, surrender, release, or other disposition, or a purchase, investment, acquisition, retention, expenditure, or other transaction, is in the opinion of the Court expedient, but it is inexpedient or difficult or impracticable to effect the same without the assistance of the Court, or the same cannot be effected by reason of the absence of a

power for that purpose vested in the trustee by the trust instrument, if any, or by law, the Court may by order confer upon the trustee, either generally or in a particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions (if any) as the Court may think fit, and may direct in what manner any money authorised to be expended, and the costs of a transaction, are to be paid or borne as between capital and income.

(2) When it is desired to rearrange the trusts to which a property is subject, but the rearrangement cannot be effected because those who take or may take any beneficial interest under the trusts include unborn or unascertained or unknown persons or persons under a disability, the Court may approve the rearrangement on behalf of the unborn or unascertained or unknown persons and the persons under a disability if the rearrangement is not to their detriment; and in determining whether any such rearrangement is to the detriment of a person the Court may have regard to all benefits which may accrue to him or her directly or indirectly in consequence of the rearrangement, including the welfare and honour of the family to which he or she belongs. A rearrangement so made shall be binding on all persons on whose behalf it is approved by the Court.

(3) The Court may rescind an order made under this section, or may make a new or further order:

PROVIDED THAT no such rescission or variation of an order shall affect an act or thing done in reliance on the order before the person doing the act or thing became aware of the application to the Court to rescind or vary the order.

(4) An application to the Court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

42. Power of Court to direct sale or lease– (1) Despite anything to the contrary in the instrument (if any) creating the trust, and despite the wishes of a trustee or person beneficially interested, the Court may, in any proceedings in which all trustees and persons who are or may be beneficially interested are parties or are represented, direct a sale or lease of a property subject to the trust on such terms, and subject to such provisions and conditions (if any) as the Court may think fit.

(2) Nothing in this section restricts any other power of the Court.

43. Right of trustee to apply to Court for directions– (1) A trustee may apply to the Court for directions concerning a property subject to a trust, or respecting the management or administration of any such property, or respecting the exercise of a power or discretion vested in the trustee.

(2) The application is to be served upon, and the hearing may be attended by, all persons interested in the application or such of them, as the Court thinks expedient.

44. Persons entitled to apply to Court– (1) An order under this Act for the appointment of a new trustee or concerning a property subject to a trust may be made on the application of a person beneficially interested in the property, whether under disability or not, or on the application of a person duly appointed trustee thereof or intended to be so appointed.

(2) An order under this Act concerning an interest in a property subject to a mortgage may be

made on the application of a person beneficially interested in the property, whether under disability or not, or of a person interested in the money secured by the mortgage.

45.Applications to Court to review acts and decisions of trustee– (1)A person who:

(a) is beneficially interested in a trust property; and

(b) is aggrieved by any act or omission or decision of a trustee in the exercise of any power conferred by this Act; or

(c) has reasonable grounds to anticipate any such act or omission or decision of a trustee by which he or she will be aggrieved, –
may apply to the Court to review the act or omission or decision or to give directions in respect of the anticipated act or omission or decision; and the Court may require the trustee to appear before it, and to substantiate and uphold the grounds of the act or omission or decision that is being reviewed, and may make such order in the premises as the circumstances of the case may require:

PROVIDED THAT no such order shall:

(a) disturb a distribution of the trust property made without breach of trust before the trustee became aware of the making of the application to the Court;

(b) affect a right acquired by a person in good faith and for valuable consideration.

(2) When the application is made, the Court may:

(a) if a question of fact is involved, direct how the question shall be determined;

(b) if the Court is being asked to make an order that may prejudicially affect the rights of any person who is not a party to the proceedings, direct that any such person shall be made a party to the proceedings.

46.Powers of Court to give judgment in absence of a trustee– If in any proceedings the Court is satisfied that diligent search has been made for a person who, in the character of trustee, is made a defendant in an action, to serve him or her with a process of the Court, and that he or she cannot be found, the Court may hear and determine the proceedings and give judgment therein against that person in his or her character of a trustee as if he or she had been duly served, or had entered an appearance in the action, and had also appeared by his or her counsel and solicitor at the hearing, but without prejudice to any interest he or she may have in the matters in question in the proceedings in any other character.

47. Power of Court to charge costs on trust estate– The Court may order the costs and expenses of and incidental to any application for any order under this Act, or of and incidental to any such order, or a conveyance or assignment in pursuance thereof, to be raised and paid

out of the property in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the Court may seem just.

48. Commission – (1) The Court may, out of the property subject to a trust, allow to the trustee, in passing his or her accounts, any such commission or percentage, not exceeding 10%, for his or her pains and trouble as is just and reasonable.

(2) No such allowance is to be made to a trustee without a special order of the Court on the final passing of accounts, unless the Court otherwise orders.

(3) If the Court allows a commission or percentage under this section in a case in which there are or have been 2 or more trustees, whether acting at the same time or at different times, the Court may, in its discretion, apportion the total amount allowed among the trustees in such manner as it thinks fit, and, in particular, may divide the amount in unequal shares or may make the allowance to one or more of the trustees to the exclusion of the other or others.

49. Power to relieve trustee from personal liability – If it appears to the Court that a trustee, whether appointed by the Court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he or she committed the breach, then the Court may relieve him or her either wholly or partly from personal liability for the same.

50. Power to make beneficiary indemnify for breach of trust–(1) If a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Court may, if it thinks fit, make such order as to the Court seems just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through him or her.

(2) This section applies to breaches of trust committed as well before as after the commencement of this Act.

51. Barring of claims– (1) If a trustee desires to reject a claim that has been made, or that he or she has reason to believe may be made, against:

(a) the estate or property that he or she is administering; or

(b) the trustee personally by reason of his or her being under any liability in respect of which he is entitled to reimburse himself or herself out of the estate or property that he or she is administering for all expenses which he or she may incur in respect of the liability,– the trustee may serve upon the person by whom or on whose behalf the claim is made or expected a notice calling upon him or her, within a period of 3 months from the date of service of the notice, to take legal proceedings to enforce the claim and also to prosecute the proceedings with all due diligence.

(2) At the expiration of that period the trustee may apply to the Court for an order under subsection (3), and shall serve a copy of the application on the person concerned.

(3) If on the hearing of that application that person does not satisfy the Court that he or she has commenced the proceedings and is prosecuting them with all due diligence, the Court may make an order:

(a) extending the period, or barring the claim, or enabling the trust property to be dealt with without regard to the claim; and

(b) imposing such conditions and giving such directions, including a direction as to the payment of the costs of or incidental to the application, as to the Court seems just.

(4) Any such notice may be given by delivering it to the person for whom it is intended or by sending it by post in a letter addressed to that person at his or her usual or last known place of abode or business. Where a notice is sent by post as aforesaid it is deemed to be served at the time at which the letter would have been delivered in the ordinary course of post.

(5) On an application by a trustee under this section, the persons beneficially entitled to the estate or property need not be made parties to the proceedings, and no order made by the Court on the application shall prejudice their right to contest the claim of the trustee to be entitled to indemnify himself or herself out of the estate or property that he or she is administering if they have not been parties to the proceedings in which the order was made.

52. Distribution of shares of missing beneficiaries– (1) If any real or personal property is held by a trustee and the property or a part thereof cannot be distributed by reason of the fact that it is not known to the trustee whether any person or class of persons who is or may be entitled thereto is in existence or whether any such person or class of persons ever has been in existence or whether any person or a member of a class of persons is alive or dead or where any such person is, the trustee may publish such advertisements (whether in Samoa or elsewhere) as are appropriate in the circumstances calling upon every such person to send in his or her claim within a time to be specified in the advertisements, not being less than 2 months in any case from the date on which the advertisement is published. Where the trustee is in doubt as to what advertisements should be published under this subsection or what notices should be given under subsection (2), he or she may apply to the Court for directions in that regard.

(2) Upon proof by affidavit of the circumstances and of the inquiries that have been made and that such advertisements as aforesaid have been published and that no person to whom the order will relate has sent in any claim, the Court may authorise the trustee to distribute the property or part thereof, subject to such conditions as the Court may impose, as if every person to whom the order relates and every member of a class to which the order relates had died before a date or event specified in the order, whether or not any such person is known to have survived the date or event, and whether or not it is known whether a person or a member of a class has ever been in existence. Any such order may be made despite that there has not been strict compliance with any directions as to advertisements previously given by the Court.

(3) Any such order shall exonerate the trustee from any further liability in respect of the property or any part thereof distributed in accordance with the order:

PROVIDED THAT nothing in this subsection shall prejudice a right which a person may have to follow the property or a part thereof or a property representing the same into the hands of the person who has received it.

(4) In making an order under this section no regard shall be had to a presumption which may

arise by reason of a person not having been heard of for 7 years or more.

(5) Any such order may provide that:

(a) the order shall not be acted on for such period as is specified in the order, and may provide that

(b) the effect of the order shall during that period be advertised in such manner and form as may be specified in the order, or that

(c) the order be served upon such person or persons as are specified therein, – and in the event of the Court exercising the jurisdiction conferred by this subsection it may in the order direct that the same is to be of no effect in the event of a person specified therein instituting proceedings in Samoa to enforce his or her claim and serving the proceedings upon the trustee within such period as is specified in the order.

(6) An order made under this section may direct how the costs of the order and of advertising under or for the purposes of the order are borne.

(7) Nothing in this section prejudices the right of the trustee (if he or she so desires) to distribute under any other law or statutory provision or prejudices the protection thereby afforded when the trustee makes distribution pursuant to any such law or provision.

Division 4 – Payment to Government

53. Payment by trustees to Government– (1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may, on filing in the Court an affidavit describing the instrument creating the trust and giving particulars of the persons beneficially entitled under the trust according to the best of their knowledge and belief, and on serving a copy of the affidavit on the Chief Executive Officer, pay the money or transfer the securities (if they can legally be so transferred) to the Government in the matter of the particular trust, which shall be described in the affidavit by the names of the parties as accurately as may be for the purpose of distinguishing it. All money and securities so paid or transferred are to be administered in the Treasury. All such money and all money derived from securities which have been transferred to or vested in the Government under this section are to be credited by the Chief Executive Officer to a deposit account established under the Public Money Act 1964 to be dealt with as hereafter provided in this Act.

(2) The receipt of the Chief Executive Officer is a sufficient discharge to the trustees for the money or securities paid or transferred to the Government under this section.

(3) If money or securities are vested in any persons as trustees, and the majority are desirous of paying or transferring the same to the Government as aforesaid, but the concurrence of the other or others cannot be obtained, the Court may order the payment or transfer to the Government to be made by the majority without the concurrence of the other or others.

(4) If any such money or securities are deposited with a banker, or other depository, the Court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment or transfer to the Government.

(5) A transfer, payment, and delivery made under any such order is valid and takes effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred paid or delivered.

(6) The Chief Executive Officer may at any time sell any securities held by the Government under this section.

54. Disposal of funds paid to Government– (1) All money and securities held by the Government under the preceding section of this Act are to be so held to attend the order of the Court:

PROVIDED THAT any such money or securities may be paid or transferred by the Chief Executive Officer to the person entitled thereto upon his or her establishing a claim thereto or may be paid or transferred to the person from whom they were received to be held by him or her as trustee if that person so requests:

PROVIDED ALSO THAT all costs and expenses reasonably incurred by the Government in connection with any such money or securities may be deducted out of the money or securities or out of any other money and securities which are for the time being held by the Government and are subject to the same trusts.

(2) If any money or securities paid or transferred to a claimant under this section are afterwards claimed by any other person, the Government and the Chief Executive Officer are not responsible for the payment or transfer thereof, but that person shall have recourse against the claimant to whom the money was paid or the securities were transferred.

55. Orders in respect of funds paid to Government– Upon application made *ex parte* by such person or persons as are competent or necessary in that behalf, the Court may make such order as it thinks fit in respect of any money or securities held by the Government under this Act, and for the payment, transfer, and administration thereof:

PROVIDED THAT the Court may direct service of the application on such persons as it thinks fit.

PART VI GENERAL PROVISIONS

56. Audit of trust estates– (1) Subject to any regulations made under this Act, and unless the Court otherwise orders, the condition and accounts of any estate which is not being administered by the Public Trustee shall, on an application being made and notice thereof being given in the prescribed manner by or on behalf of a trustee or beneficiary in that estate, be investigated and audited by such solicitor or such member of the Samoa Society of Accountants as may be agreed on between the applicant trustee and his or her co-trustees and the Public Trustee, or between the applicant beneficiary and the trustees and the Public Trustee, as the case may be, or, in default of any such agreement, by a solicitor or a member of the Society of Accountants appointed by the Public Trustee:

PROVIDED THAT:

(a) except with the leave of the Court, such an investigation or audit is not to be required within 12 months after any such previous investigation or audit; and

(b) a beneficiary is not appointed under this section to make an investigation or audit; and

(c) the Public Trustee may require the applicant to deposit a sum of money covering the costs of the Investigation and audit, as estimated by the Public Trustee, or to secure the same to the Public Trustee's satisfaction before proceeding with the application.

(2) The person making the investigation or audit (in this section called "the auditor") shall have a right of access to the books, accounts, and vouchers of the trustees, and to any securities and documents of title held by them on account of the estate, and may require from them such information and explanations as may be necessary for the performance of his or her duties.

(3) Upon the completion of the investigation and audit, the auditor shall forward to the applicant, and to a trustee, and to the Public Trustee, a copy of the accounts of the estate, together with a report thereon, and a certificate signed by him or her to the effect that the accounts correctly show the state of the affairs of the estate, and that he or she has had the securities of the trust fund investments (if any) produced to and verified by him or her, or (as the case may be) that such accounts are deficient in such respects as may be specified in that certificate.

(4) A beneficiary shall, subject to any regulations made under this section, be entitled at all reasonable times to inspect and take copies of the accounts, report, and certificate, and, at his or her own expense, to be furnished with copies thereof or extracts therefrom.

(5) The auditor may be removed by order of the Court; and if an auditor is removed, or resigns, or dies, or becomes bankrupt or incapable of acting before the investigation and audit are completed, a new auditor may be appointed in his or her place in like manner as the original auditor was appointed.

(6) The remuneration of the auditor and the other expenses of the investigation and audit are to be such as may be approved by the Public Trustee but subject to review by the Court on the application of a person affected. Unless the Court otherwise orders, such expenses are borne by the estate, and, in the event of the Court so ordering, are borne by the trustees personally or any of them, or by the applicant, or be apportioned between them or any of them, or between them and any of them and the estate, in such proportions as the Court thinks just.

(7) If a person having the custody of any books, accounts, vouchers, securities, or documents to which the auditor has a right of access under this section fails or refuses to allow him or her to have access thereto, or in anywise obstructs the investigation or audit, the auditor may apply to the Court, and thereupon the Court shall make such order as it thinks just.

(8) Subject to any rules of Court, applications under or for the purposes of this section to the Court are to be made to a Judge in Chambers.

(9) If a person in a statement of accounts, report, or certificate required for the purposes of this section wilfully makes a statement that is false in any material particular, he or she is liable on conviction to imprisonment for a term not exceeding 2 years, or to a fine not exceeding 5 penalty units instead of or in addition to that imprisonment.

(10) The Public Trustee is not to be liable for any expenses or costs under this section.

(11) All expenses and costs for which the estate is liable under this section are a charge on the assets of the estate, and that charge may be enforced in such manner as the Court directs.

57. Fees and commission deemed a testamentary expense – The fees, commission, remuneration and other charges payable to a trustee in respect of the administration of the estate of a deceased person are deemed to be testamentary expenses.

58. Costs of inquiring regarding beneficiaries– The costs, expenses, and charges of the trustee of a property in respect of any inquiries made by him or her to ascertain the existence and identity of a person or persons entitled to any legacy, money, or distributive share in the property or otherwise incurred in relation thereto are to be borne by and paid out of the legacy, money, or distributive share of the person or persons in respect of whom the inquiries were made.

59. Repeal and saving– (1) The Trustee Act 1956 (NZ) is repealed as part of the law of Samoa.

(2) The repeal of that Act does not affect a document made or a thing whatsoever done under that Act, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

REVISION NOTES 2008– 2012

This Act has been revised under section 5 of 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) Insertion of the commencement date

(c) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:

(i) “Every” and “any” changed to “a/an”

(ii) Present tense drafting style:

- “shall be” changed to “is/are” or “is/are to be”
- “for the time being” and “from time to time” removed

(iii) Use of plain language:

- “notwithstanding” changed to “despite”
- “where” changed to “if”

(iv) Numbers and symbols described in words changed to figures

(v) Removal of superfluous terms: “the provisions of”, “the generality of”

- (vi) “the foregoing provisions of this section”, “the preceding subsection” and similar wording changed to the actual section/subsections
- (vii) Terms with the same meaning have been merged (e.g. “conveyance” or “to convey” and “trust” or “trustee”)
- (viii) Removal of reference to “(1)” in section 13 since there is only one subsection
- (ix) Making arrangement of provisions consistent with the body of the Act.
- (x) Divisions inserted for subheadings of certain Parts.
- (xi) Sections 17(1), 22(2), 23, 32(3), 38, 45(1) and 52(5) paragraphed.

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

This Act has been revised in 2008, 2009, 2010, 2011 and 2012 by the Attorney General under the authority of the *Revision and Publication of Laws Act 2008* and is the official version of this Act as at 31 December 2012. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.

Aumua Ming Leung Wai
Attorney General of Samoa

Revised in 2008 by the Legislative Drafting Division under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel).

Revised in 2009, 2010 and 2011 by the Legislative Drafting Division under the supervision of Papalii Malietau Malietoa (Parliamentary Counsel).

Revised in 2012 by the Legislative Drafting Division.

**The Trustee Act 1975 is administered
by the Ministry of Justice Courts and Administration.**