

## SAMOA

### Arrangement of Provisions

Title	
	10. Policy of Cabinet
<b>PART I</b>	
<b>Preliminary</b>	<b>PART IV</b>
	<b>Procedures of the Authority</b>
1. Short title and commencement	11. Meetings
2. Interpretation	12. Minutes of Meetings
3. Declaration of ports and approaches	13. Disclosure of Interest
	14. Vacancy not to invalidate acts
<b>PART II</b>	15. Execution of documents, etc
<b>Establishment and Membership of Authority</b>	<b>PART V</b>
	<b>Assets, Liabilities, and original Employees</b>
4. Establishment of Authority	16. Original Assets of the Authority
5. Membership of Authority	17. Transfer of other property to Authority
6. Term of office of Members	18. Transfer of employees
7. Remuneration	
<b>PART III</b>	<b>PART VI</b>
<b>Functions and Powers of Authority</b>	<b>Provisions relating to Staff</b>
8. Functions of Authority	19. Appointment of General Manager
9. Powers of Authority	



- |     |  |     |                           |
|-----|--|-----|---------------------------|
| 62. | Authorised employee of Authority may prosecute | 65. | No Effect to Shipping Act |
| 63. | Apparatus, etc., not subject to distress, etc  | 66. | Act to bind State         |
| 64. | Regulations                                    | 67. | Repeals and savings.      |
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### 1998, No. 34

#### **AN ACT to establish the Ports Authority of Samoa.**

*(16 July 1998)*

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:-

#### **PART I Preliminary**

**1. Short title and commencement-**(1) This Act may be cited as the Ports Authority Act 1998.

(2) This Act shall come into force upon publication by the Minister of a notice to that effect in the Gazette or Savali, and different dates may be appointed for the coming into force of different sections of this Act.

**2. Interpretation** - In this Act, unless the context otherwise requires -

“Approaches to a port” means any area of navigable channel adjacent to a port so declared under the provisions of section 3 of this Act:

“Authority” means the Ports Authority established under section 4 of this Act:

“Authority pilot” means a pilot employed by the Authority pursuant to section 50 of this Act:

“Buoy” includes a floating object of any size, shape and colour which is moored to the seabed and which

serves as an aid to navigation or for other specific purposes:

“Chairman” means the Chairman of the Authority appointed under section 5 of this Act:

“Container” means a transportable, ISO standardised unit, designed for repeated use in the multi-modal transportation of goods and which is capable of being secured and moved by specialised equipment using standardised, in-built fittings:

“Dangerous Goods” means any goods or substances classified as dangerous goods by the International Maritime Dangerous Goods Code; and also includes goods or substances declared to be dangerous goods pursuant to section 51 of this Act:

“Dues” include port dues, light dues and wharfage dues levied under this Act, but does not include rates:

“General Manager” means the General Manager of the Authority appointed under section 19 of this Act and includes any person for the time being performing the functions of General Manager:

“Goods” includes animals, carcasses, baggage, personal effects, general cargo, containers, and any other movable property of any kind whatsoever:

“Harbour craft” means any vessel which is used within the port for any purpose:

“International Maritime Dangerous Goods Code” means the Code regulating the packaging, labelling, handling, storage, stowage separation and carriage by sea of dangerous goods as specified by that Code, as issued by the International Maritime Organisation, and as amended from time to time:

“ISO” means the International Standard Organisation:

“Master” includes every person, except a pilot, having command or charge of any vessel:

“Member” means a member of the Authority appointed by the Head of State under the provisions of this Act:

“Minister” means the Minister of Transport:

“Ministry” means the Ministry of Transport:

“Marine navigational aid” means all buoys, beacons, marks, signs, lights and installation placed to assist marine navigation:

“Owner” when used in relation to goods, includes any person being or holding himself out to be the owner, importer, exporter, consignor, consignee, shipper or agent responsible for the sale, custody, loading, handling, discharge or delivery of such goods; and when used in relation to any vessel, includes every person acting as agent for the owner responsible for receiving freight or paying other charges in respect of the vessel and includes any part-owner, charterer, operator, or mortgagee in possession, or any duly authorised agent of any such person:

“Pilotage Area” means a pilotage area as defined in the Shipping Act 1998:

“Port” means any place in Samoa, and any navigable river or channel leading into such place, declared to be a port by or pursuant to section 3 of this Act:

“Port Master” means the Port Master appointed under section 21 of this Act:

“Rates” means any rates or charges leviable by the Authority under this Act and includes any toll or rent, but does not include dues:

“Vessel” includes every description of ship, boat, ferry or craft used or capable of being used in navigation by water; and includes any floating rig or platform; but excludes a canoe or other craft of traditional build:

“Warehouse” includes any warehouse, shed or other building belonging to or under the control of the Authority in which goods may be lawfully placed:

“Wharf” includes a quay, pier, jetty, ramp or other similar landing place from or onto which passengers or goods may be taken on board of or landed from a vessel.

**3. Declaration of ports and approaches-**(1) The ports and approaches to ports covered by this Act shall be those areas so designated in the schedule to this Act and declared pursuant to subsection (2) of this section.

(2) The Head of State, acting on the advice of Cabinet, may at any time by Order -

(a) Declare any place in Samoa and any navigable river or waters leading into such place to be a port within the meaning of this Act; and

(b) Declare any area or navigable river or channel adjacent to a port to be the approaches to such port within the meaning of this Act.

(3) Every declaration under subsection (1) of this section shall define the limits of the port, or its approaches as the case may be.

## **PART II**

### **Establishment and Membership of Authority**

**4. Establishment of Authority-**(1) There is hereby established an Authority to be called the Samoa Ports Authority which shall have the powers and functions conferred upon it by this Act.

(2) The Authority is a body corporate, capable of entering into contracts, acquiring, holding, disposing of real and personal property, suing and being sued; and doing and suffering all such other acts and things that bodies corporate may lawfully do and suffer.

**5. Membership of Authority-**(1) The Authority shall consist of the Minister, who shall be Chairman, and four members, all of whom shall be appointed by the Head of State, acting on the advice of Cabinet.

(2) No person by reason only of being a member of the Authority, shall be deemed to be employed in the Public Service or in the "Service of Samoa" within the meaning of those terms as defined in Articles 83 and 111 respectively, of the Constitution of the Independent State of Samoa.

**6. Term of Office of members-**(1) Every member of the Authority shall hold office for a term of 5 years and shall be eligible for reappointment for one further term.

(2) A member may at any time resign his office by notice in writing to the Minister.

(3) The Head of State, acting on the advice of Cabinet may remove at any time a member of the Authority -

(a) For disability, neglect of duty, misconduct, or bankruptcy; or

(b) If he is satisfied that the member has left Samoa permanently; or

(c) If the member is absent from 3 consecutive meetings of the Authority without the prior approval of the Chairman or Minister.

(4) If a member of the Authority dies, or resigns, or is removed from office, the Head of State, acting on the advice of Cabinet, may appoint another person in place of that member to hold office until such former member's term of office would have expired had he not ceased to be a member.

**7. Remuneration -** Members of the Authority -

(a) Not being full-time salaried employees of the Government of Samoa or of the Authority, may be paid out of the funds of the Authority, such remuneration and other allowances as the Cabinet may from time to time determine; and

- (b) Shall be reimbursed out of the funds of the Authority for any expenses reasonably incurred by them in respect of their attendance at meetings of the Authority.

### **PART III**

#### **Functions and Powers of Authority**

**8. Functions of Authority** - The functions of the Authority shall include -

- (a) The provision, management and maintenance of adequate and efficient port services, facilities and security in ports and approaches;
- (b) The provision of any goods or the performance of any services to assist the Ministry in the exercise of a statutory function for which it may at its discretion enter into an agreement with the Ministry in respect of payment;
- (c) The regulation of navigation and maintenance of navigation aids within ports and approaches;
- (d) The promotion of this use, improvement and development of ports; and
- (e) The co-ordination of all activities of or within ports and approaches.

**9. Powers of Authority**-(1) Subject to this Act and any regulations made hereunder, the Authority shall have all the powers, rights and authorities necessary or expedient to enable it to exercise its functions.

(2) Without limiting the generality of subsection (1) of this section, the Authority shall have the powers -

- (a) To appoint and employ such persons as it may consider necessary for the efficient performance of its functions;
- (b) To enter into any contract, covenant, bond or agreement of any kind whatsoever for the purpose of this Act;

- (c) To authorise any person to carry out any work or perform any act in furtherance of its functions and powers;
- (d) To carry on any business or activity whatsoever which appears to the Authority to be necessary or advantageous for the discharge of its functions;
- (e) To acquire, hire, procure, construct, erect, manufacture, provide, maintain or repair anything whatsoever required by the Authority for the purposes of this Act;
- (f) To provide services within a port or its approaches, including;
  - (i) berthing, unberthing, towing, mooring, unmooring, moving, or docking any vessel;
  - (ii) embarking or disembarking passengers to or from any vessel; including the provision of landing-places;
  - (iii) providing lighterage or to appoint, license and regulate lighterage operators;
  - (iv) piloting any vessel;
  - (v) installing and maintaining navigation installations, but subject to the powers of the Secretary contained in the Shipping Act 1998;
  - (vi) sorting, weighing, measuring, storing, warehousing or otherwise handling any goods; and
  - (vii) supplying fuel, water telephone and other services to vessels;
  - (viii) rendering assistance to any vessel;
  - (ix) recovering wrecks;
- (g) To appoint, license and regulate operators or suppliers of stevedores and other labour and equipment in a port;
- (h) To license and regulate commercial services provided at or within a port;
- (i) To acquire any undertaking, affording, or intending to afford facilities for the loading and

discharging or warehousing of goods in a port or for the bunkering of vessels;

- (j) To provide such fire and security services, both within a port or elsewhere, as may be deemed by the Authority necessary for the purpose of extinguishing fires and preserving life and property;
- (k) To control construction and use of wharves, docks and other works, whether above or below the high water mark, within a port or the approaches to a port;
- (l) Subject to the provisions of any other act or statutory requirement to reclaim, excavate, enclose or raise any part of any land vested in the Authority;
- (m) To do anything for the purposes of -
  - (i) improving the skill of the employees of the Authority; or
  - (ii) improving the equipment of the Authority and the manner in which such equipment is operated and maintained;
- (n) To provide accommodation and recreational facilities for employees of the Authority and generally to promote their welfare;
- (o) To establish, control, manage and maintain, or contribute to any provident fund or other superannuation benefits approved by the Minister for the benefit of its employees or the dependents of deceased employees;
- (p) To acquire such land and execute such works and do whatever may be necessary or expedient in respect of the functions of the Authority under the provisions of this Act or of any other enactment;
- (q) To sell, transfer, lease, hire or otherwise dispose of any of its real or other property; and
- (r) Subject to the provisions of this Act, to do everything necessary or convenient in connection with

or incidental to the performance of its functions under this Act or any other enactment.

(3) The powers conferred by subsection (1) shall be in addition to and not in derogation from any other powers conferred upon the Authority by this Act or any other enactment.

**10. Policy of Cabinet-**(1) In the exercise of its functions and powers, the Authority shall have regard to the general policy of Cabinet as communicated in writing by the Minister.

(2) The Authority shall comply with any lawful written direction by the Minister concerning any matter relating to the policy to be followed by the Authority in the performance of its functions.

#### **PART IV Procedures of the Authority**

**11. Meetings-**(1) The Chairman shall preside at every meeting of the Authority. In the absence of the Chairman, the members shall appoint one of their members to be the Chairman of that meeting.

(2) The first meeting of the Authority shall be held on a day and time and place to be appointed by the Chairman and subsequent meetings shall be held at such times and places as the Authority may from time to time determine provided that not more than two months shall elapse between two consecutive meetings.

(3) The Chairman shall, at the request of the General Manager or on the requisition in writing of any three members stating the business to be considered, within seven days of the receipt by him of such requisition, convene a special meeting.

(4) At every meeting the quorum shall be three members.

(5) The proceedings at any meeting shall not be invalidated by any defect in the appointment of a member.

(6) Every decision at a meeting of the Authority shall be made by a majority of the members present.

(7) The Chairman at any meeting shall have a deliberative vote and in the event of an equality of votes, shall have a casting vote.

(8) A resolution in writing signed or assented to by letter, telegram, telex, facsimile, e-mail, or cable by a majority of the members shall have the same effect and be as valid as if it had been duly passed at a meeting of the Authority.

(9) Subject to the provision of this Act, the Authority may regulate its meetings in such manner as it thinks fit.

**12. Minutes of meetings-**(1) The Authority shall cause minutes of all resolutions and proceedings of its regular and special meetings to be kept in a book provided for that purpose.

(2) The minutes shall be signed by the Chairman of the next meeting subsequent to the passing thereof.

(3) A copy of the minutes of every meeting shall be furnished to every member before the next meeting.

**13. Disclosure of interest** - If a member has any pecuniary or other interest, direct or indirect, in any contract or proposed contract or in any other matter relating to the Authority, he shall as soon as possible disclose to the Chairman of the Authority the fact and nature of such interest and thereafter the member shall not take part in any deliberation or decision making relative to such contract or proposed contract or other matter.

**14. Vacancy not to invalidate acts** - No act or proceeding of the Authority shall be invalidated or questioned only on account of the existence of a vacancy in the membership of the Authority.

**15. Execution of Documents, etc.-**(1) The common seal of the Authority shall not be affixed except pursuant to a resolution of the Authority and in the presence of the Chairman and one member, and such affixing shall be authenticated by the signature of such persons.

(2) All documents to which the Authority is a party, other than those required by law to be under seal, may be signed on

behalf of the Authority by the Chairman or the General Manager, or by any member or employee of the Authority, generally or specially authorised by a resolution passed at a meeting of the Authority.

**PART V**  
**Assets, Liabilities and Original Employees**

**16. Original assets of the Authority-**(1) The original assets of the Authority shall consist of -

- (a) All buildings, installations and improvements, located on or adjacent to or in the vicinity of the ports described in the Schedules to this Act, which are in use by the Government at the date this Act comes into force for the maintenance and operation of any of those ports; and
- (b) All vessels, vehicles, plant, machinery, equipment, stores, furniture and apparatus afloat or on shore which are in use by the Government for the maintenance and operation of any port at the date this Act comes into force.

(2) The assets referred to in subsection (1) of this section are hereby vested in the Authority.

(3) The Government shall cause the land described in the Schedule to this Act to be transferred to the Authority forthwith upon this Act coming into force.

(4) If any question arises as to whether any asset has become or is the property or responsibility of the Authority, that question shall be decided by Cabinet.

**17. Transfer of other property to Authority-**(1) Real or other property, vested in or belonging to the Government, shall be transferred to the Authority to enable it to perform its functions under this Act as Cabinet may from time to time determine.

(2) Upon such transfer, all debts, liabilities and obligations in connection with or pertaining to such property shall also be

transferred to and vest in the Authority and shall be deemed to have been incurred by the Authority.

(3) Land acquired by the Government under the Taking of Land Act 1964 for the purposes of this Act may be vested in the Authority.

**18. Transfer of employees** - Upon the coming into force of this Act, such persons, as the Minister may think fit, who were employed by the Government immediately prior to the commencement of this Act and were engaged in discharging any of the functions vested in the Authority by this Act, shall be deemed to be transferred to the service of the Authority on terms no less favourable than those they had enjoyed immediately prior to the commencement of this Act, and such terms which shall be determined by the Authority, shall take into account salaries and conditions of service enjoyed by them when in the employ of the Government.

Provided that nothing in this section shall preclude the secondment to the Authority of officers in the employment of the Government on such terms as may be agreed upon by the Government and the Authority.

## **PART VI**

### **Provisions relating to General Manager and Staff**

**19. Appointment of General Manager**-(1) The Authority shall, with the approval of the Minister as to all matters in this section, appoint a General Manager for such term, at such remuneration and upon such conditions as it may think fit.

(2) The General Manager shall not be removed from office without the consent of the Minister.

(3) The General Manager shall devote the whole of his working time to the Authority and shall not, without the written approval of the Minister, occupy any other office or employment, whether remunerated or not, except that he may act as member of any board, committee or commission established by the Government.

(4) The Authority may delegate any or all of its powers and functions to the General Manager.

Provided that the foregoing provisions of this subsection shall not prevent the exercise of any power or function by the Authority.

**20. Powers of the General Manager-**(1) The General Manager shall -

(a) Serve as Chief Executive Officer of the Authority, responsible to it for its management and the execution of its policy; and

(b) Subject to the provisions of this Act and to any resolution passed at a meeting of the Authority do everything necessary or convenient to be done in connection with, or incidental to, the performance of his duties under this Act or any other written law and, in particular, and without limiting the generality of the foregoing, he may

(i) have the power, with the approval of the Board, to act in relation to or enter into any contracts on behalf of the Authority;

(ii) in any case of emergency, direct the execution of any work or the doing of any act which the Authority is empowered to execute and do and the immediate execution or doing of which is, in his opinion, necessary for the operation of port services or the safety of persons on vessels, and he may direct that the expense of executing that work or doing that act shall be paid from the funds of the Authority;

(iii) Provided that he shall report anything done under subparagraph (ii) to the next following meeting of the Authority.

(2) Whenever the General Manager is prevented by illness, absence or other like cause from performing his duties or when the office of the General Manager is vacant, the Authority may

appoint one of its officers to perform his duties during such period as he is so prevented from doing or the office is vacant.

(3) The General Manager may from time to time by writing under his hand either generally or particularly, delegate to any officer or employee of the Authority as he thinks fit all or any of the powers he may exercise under this Act including any powers delegated to him by the Authority, but not including his power of delegation.

**21. Appointment of Port Master and Deputy Port Masters-**(1) The Authority shall appoint as one of its officers a Port Master for the purposes of this Act, and may also appoint as officers such number of Deputy Port Masters as it may consider necessary for all or any of the purposes of this Act.

(2) The term, remuneration and conditions of any appointment made under subsection (1) of this section shall be determined by the Authority.

**22. Powers of Port Master in relation to vessels-**(1) Port Master may within a port or its approaches -

- (a) Direct where any vessel shall be berthed, moored or anchored and the method of anchoring;
- (b) Direct the removal of any vessel from any berth, wharf, terminal or anchorage and the time within which such removal is to be effected; and
- (c) Regulate the movement of vessels generally.

(2) Any person who, without lawful excuse, refuses or neglects to obey or comply with any direction given under subsection (1) of this section commits an offence and on conviction shall be liable to a fine not exceeding \$5,000, or to imprisonment for a term not exceeding twelve months or to both.

(3) If any person to whom a directions given under subsection (1) of this section refuses or neglects to comply with such direction the Authority may, whether or not any proceedings have been instituted against any person for any offence, do or cause to be done all such acts as are in its opinion

reasonable or necessary for the purpose of carrying out such compliance and may hire or employ such persons as it considers necessary for such purpose and all expenses incurred in doing such acts shall be paid or borne by or recoverable from the person to whom the direction was given.

**23. Fire on board vessel-**(1) In the event of fire breaking out on board a vessel in a port or the approaches to a port, the Port Master may proceed on board the vessel with such assistance and persons as he considers proper to prevent danger to other vessels, may give orders and take any other measures that he considers expedient for the protection of life and property.

(2) If such orders are not forthwith carried out by the master of any vessel to whom such orders are given, the Port Master may himself proceed to carry them into effect.

(3) All expenses incurred in the exercise of the powers of the Port Master under this section shall be recoverable from the master and owner of the vessel concerned.

(4) Any person who, without lawful excuse, refuses or neglects to obey or comply with any order given under subsection (1) of this section commits an offence and on conviction shall be liable to a fine not exceeding \$5,000, or to imprisonment for a term not exceeding twelve months or to both.

**24. Power to board vessel-**(1) The Port Master may go onboard any vessel within a port or the approaches to a port whenever he suspects that any offence against this Part of the Act has been or is about to be committed in any vessel, or whenever he considers it necessary to do so in the discharge of any duty imposed upon him by this Act.

(2) The master of a vessel who, without lawful excuse, refuses to allow the Port Master to enter that vessel under his powers in subsection (1) of this section commits an offence and shall be liable on conviction to a fine not exceeding \$2,000.

**25. Exclusion of liability** - The Authority shall not be liable for any act, omission or default of the Port Master.

**26. Staff of Authority**-(1) The Authority may from time to time appoint and employ on such terms and conditions as the Authority may determine such other officers and employees as may be necessary for the effective performance of its functions.

(2) The Authority may make rules, not inconsistent with this Act, for the manner of appointment, conduct and discipline and the terms and conditions of service of the officers and employees of the Authority.

(3) No officer or employee of the Authority shall be personally liable for any act done or omitted to be done in the exercise or performance or purported exercise or performance of the functions powers and duties of the Authority.

## **PART VII**

### **Financial Provisions**

**27. Disbursement of Authority funds**-(1) As approved by the Board, the revenue of the Authority in any year shall be applied in payment of the following expenses in accordance with Generally Accepted Accounting Principles:-

- (a) The interest and capital repayments on any loan payable by the Authority;
- (b) The sums required to be paid to the Government towards repayment of any loan made by the Government to the Authority;
- (c) The salaries, fees, allowances, of the members of the Authority;
- (d) The salaries, fees, allowances, remuneration, provident fund and other superannuation benefits of the employees, agents and technical or other advisers of the Authority;
- (e) The working of establishment expenses, and the expenditure on, or provision for the

maintenance of any of the installations of the Authority, and the discharge of the functions of the Authority properly chargeable to the revenue accounts;

- (f) Such sums as the Authority may consider appropriate to set aside in respect of depreciation or renewal of property of the Authority, having regard to the amount set aside out of revenue under paragraphs (a) and (b) of this subsection;
- (g) The cost, or any portion thereof, of any new works, plant, vessels or appliances not being a renewal of the property of the Authority, which the Authority may determine to charge to revenue;
- (h) Such sums by way of contribution to public or charitable purpose associated with the purpose of this Act as the Authority, with the approval of the Minister, may decide; and
- (i) Any other expenditure authorised by the Authority and properly chargeable to revenue.

(2) Subject to subsection (3) of this section the balance of the revenue of the Authority being the surplus revenue shall be applied for the creation of a general reserve or such other reserves or capital fund as the Authority may consider appropriate.

(3) Notwithstanding the provisions of subsection (2) of this section if in any year the Minister shall so direct there shall be paid to the Government by way of a dividend to the Treasury, such proportion not exceeding one half of the surplus revenue of that year as the Minister may determine.

**28. Investment of Funds** - Any funds not immediately required for expenditure by the Authority may be invested in any manner authorised by the Public Money Act 1964 for the investment of balances in the Public Account.

**29. Borrowing Powers** - The Authority may, with the consent of the Minister, raise loans, either by charge or

mortgage or by the creation and issue of debentures, debenture stock, bonds or other wise, for the purpose of carrying out its functions under the provisions of this Act.

**30. Cabinet Approval for borrowings and expenditure**

- Notwithstanding any provision in sections 27 and 29, the approval of Cabinet must be obtained in relation to any expenditure or the borrowing of an amount for which Cabinet approval is required in accordance with any policy or direction of Cabinet in force from time to time.

**31. Annual Estimates-**(1) The Authority shall every year cause to be prepared and shall adopt an annual budget of revenue and expenditure of the Authority for the ensuing year.

(2) Actual monthly financial statements and financial performance year to date shall be reviewed and compared to the budget at each and every Authority meeting.

(3) A copy of the annual budget and monthly financial statements, as per subsection (2), shall, upon their adoption by the Authority, be sent forthwith to the Minister.

(4) A summary of the annual budget, the end-of-the-year financial and supplementary results, adopted by the Authority, shall be published in the Gazette.

**32. Audit of accounts-**(1) The Authority shall keep proper accounts and records in relation to its business and in accordance with Generally Accepted Accounting Principles and within 3 months after the end of each financial year, shall prepare a balance sheet, income statement and statement of source and application of funds, and such other statements of account as are necessary to show fully the financial position of the Authority and the financial performance of its operations during that year.

(2) The balance sheet, revenue statements and other accounts shall be audited by fully qualified, independent auditors in accordance with Generally Accepted Auditing Principle.

(3) For the purposes of this section the value of all assets and liabilities vested in or assumed by the Authority pursuant to sections 17 and 18 of this Act shall be fixed as at the time of their vesting or assumption at such amount or amounts as determined by fair market valuation.

**33. Presentation of financial statements and audit reports** - As soon as the accounts of the Authority and the financial statements have been audited in accordance with the provisions of this Act, a copy of the audited financial statement signed by the Chairman and certified by the external auditors together with a copy of any report made by the Auditor General on the request of the Minister, shall be submitted to the Minister.

**34. Other Reports** - The Minister may require the Authority to provide any further financial or management reports which he may deem necessary as an additional indication of the Authority's financial and operational performance.

**35. Statement of accounts and annual report-(1)** As soon as practicable after the end of each financial year, but not later than 90 days after the end of the financial year or such later date as the Minister may approve, the Authority shall transmit to the Minister -

- (a) A copy of the statement of accounts;
- (b) A copy of the report of the external auditors on the accounts or the report of the Auditor General; and
- (c) A report containing details of the activities of the Authority during the year, including statistically date and year to date operational performance compared to the budget.

(2) The Minister shall cause copies of the accounts and reports to be laid before Parliament as soon as practicable thereafter.

## PART VIII

### **Dues and Rates**

**36. Dues payable in respect of vessels** - The owner, agent or master of every vessel which enters, leaves, or uses any port in Samoa shall pay to the Authority such port or other dues as the Authority, with the approval of the Minister and by notification in the Gazette or the Savali, may from time to time determine.

**37. Dues payable in respect of goods**-(1) Dues on goods shall be levied by and paid to the Authority in respect of goods brought into, loaded or discharged within a port or its approaches (including a wharf not belonging to the Authority under its control).

(2) Dues shall be determined by the Authority with the approval of the Minister and shall be published in the Gazette or the Savali.

**38. Persons liable for goods dues** - In addition to the persons referred to in section 37 of this Act the following persons shall be liable to pay dues payable in respect of any goods passing through the port, that is to say -

- (a) The owner of the goods;
- (b) Any consignor, consignee, shipper, or agent for the sale or custody of the goods; and
- (c) Any person entitled to the possession of the goods either as owner or agent for the owner;

(2) The consignor and consignee of any goods carried in a vessel shall, until the contrary is shown, be deemed to be the persons so named on the Bill of Lading and listed in the vessel's manifest.

**39. Rates** - Subject to the provisions of this Act, the Authority may, with the approval of the Minister and by notification in the Gazette or Savali, levy such rates as it shall determine for the use of any land, works and appliances belonging to it and for services, goods and facilities provided by it in pursuance of its powers under this Act or under any other

enactment or under any regulations, and without prejudice to the generality of the foregoing, for any of the following matters

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- (a) The landing, handling, wharfage, , storage or carriage of goods and the deposit with it or the placing of goods in its custody or control;
- (b) The provision of pilotage services to any vessel within Samoan territorial waters;
- (c) The use of any vessel, vehicle or person; or any land, works, installation or appliances, wharf or dock under its control;
- (d) The use of any gear, tackle, instruments, tools, utensils, staging or materials supplied by it for the purpose of any vessel using or any person working within its boundaries;
- (e) The use of any vessel or engine belonging to or maintained by the Authority for the extinction of fire;
- (f) The towing of, and rendering assistance to, any vessel;
- (g) The supply by the Authority of water, telephone services, fuel, electricity and other forms of energy;
- (h) The laying of moorings, cables or pipes;
- (i) The laying, lifting and servicing of buoys not owned by the Authority; and
- (j) The provision of priority berthing arrangements.

**40. Powers of entry on to vessels** - Any duly authorised employee of the Authority may board and inspect any vessel within a port or the approaches to a port in order to ascertain the amount of the dues or rates payable in respect thereof.

**41. Receipts** - Receipts for dues and rates shall be given to the person paying them, and any vessel in respect of which such receipt is not produced, when demanded by a duly authorised employee of the Authority, may be detained until such receipt is

produced or other satisfactory proof of payments has been given.

**42. Lien on goods** - For the amount of all dues and rates levied under the provisions of this Act in respect of any goods, the Authority shall have a lien on the goods and shall be entitled to seize and detain them until the dues and rates are fully paid or secured to its satisfaction and such lien shall have priority over all other liens and claims except those to the Government.

**43. Powers to sell or dispose of goods-**(1) Subject to the provisions of this section, if any goods which have been placed in or on premises of the Authority are not removed therefrom within a period of 60 days from the time when they were so placed, the Authority may, at the expiration of that period, sell by public auction or dispose of all or any of such goods as it may deem fit.

Provided that -

- (a) In the case of goods for which a through Bill of Lading has been produced, the period of sixty days referred to in this subsection shall be substituted by a period of ninety days; and
- (b) If the goods are of a perishable nature the Authority may direct their removal within such shorter period, not being less than twenty four hours after the discharge thereof, as it may think fit, and if not so removed, the Authority may sell all or any of such goods by public auction or dispose of them as it may think fit.

(2) For the purposes of the last preceding subsection, a sale shall not be rendered invalid by reason only that it takes place in an area to which the public is not admitted as of right.

(3) Before effecting a sale under this section, the Authority shall give at least three days' notice thereof by advertisement in a local newspaper circulating in Samoa, unless the goods are of so perishable a nature as in the opinion of the Authority renders their immediate sale necessary or advisable in which event the

Authority shall give such notice (if any) in whatever manner it considers the urgency of the case requires.

(4) The proceeds of any sale under this section shall be applied by the Authority in the following order -

- (a) First, in payment of any duty owing to the Government;
- (b) Secondly, in payment of the expenses of the sale;
- (c) Thirdly, in payment of all charges and expenses due to the Authority under the provision of this Act in respect of the goods; and
- (d) Fourth, in payment of freight or other claims or liens of which notice has been given under the provisions of any law, and by rendering the surplus, if any, to the person entitled thereto on demand, and, in case no such demand is made within one year from the date of the sale of the goods, by paying the surplus to the account of the Authority, whereupon all rights to the same by such person shall be extinguished.

(5) If any inconsistency arises between the operation of this section and the exercise of any power under the Customs Act, the provisions of the Customs Act shall prevail.

**44. Shipping clearance to be withheld, etc.** - Notwithstanding the provisions of any other enactment, if the Authority gives to any public officer, whose duty it is to grant clearance to any vessel, a written notice stating that an amount therein specified is due in respect of dues or rates levied under this Act in respect of that vessel, he shall not grant such clearance until the amount due has been paid or has been secured to the satisfaction of the Authority.

**45. Exemption, reduction, etc., of dues, rates, etc.** - The Authority on a valid reason may -

- (a) Exempt any vessel or goods or classes of vessels or goods from the payment of dues; and
- (b) Reduce, refund or waive, in whole or in part, any dues, or the rates under this Act.

**46. Evasion-**(1) If the master or owner of any vessel or any owner, consignee or consignor of goods, by any means whatsoever, evades or attempts to evade any of the dues or rates leviable under this Act, that person commits an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding six months, and shall in addition be liable to pay to the Authority as penalty, double the amount of dues or rates he evaded or attempted to evade.

(2) The tender to or acceptance by the Authority or and of its employees of any dues or rates the payment of which has been previously evaded or left unpaid, shall not release or discharge any person from his liability under the provisions of subsection (1) of this section.

## **PART IX**

### **Pilotage and Dangerous Goods**

**47. Compulsory pilotage-**(1) The provisions of this Part are in addition to and not in derogation of relevant provisions of the Shipping Act 1998.

(2) Subject to section 48 of this Act, navigation of every vessel in any pilotage area shall be conducted by a person authorised in accordance with the section 49 of this Act.

(3) A vessel while being moved within any area of a port which is part of a pilotage area shall be deemed to be a vessel navigating in a pilotage area.

**48. Exemptions from pilotage -** Notwithstanding the provisions of section 47 of this Act the Authority may, if it appears to the Authority to be necessary, exempt any vessel or class of vessel while navigating in any pilotage area from being required to utilise the services of a licensed pilot subject to such terms and conditions as it may think fit to impose.

**49. Vessel to be piloted by a licensed pilot-**(1) No vessel shall be piloted in a pilotage area by any person other than a person appointed by the Authority to be a licensed pilot.

(2) Notwithstanding subsection (1) the Authority may, if it considers expedient, authorise any person to pilot vessels in a pilotage area subject to such terms and conditions as it thinks fit.

(3) The Authority shall not be liable for any actions of pilots in its employ.

**50. Authority to employ pilots-**(1) Subject to the provisions of this Act, the Authority may employ such number of pilots as it considers necessary or expedient for the purpose of providing an adequate and efficient pilotage service.

(2) No person shall be employed as a licensed pilot in a pilotage area unless he is in possession of a valid licence to act as a pilot in such area issued pursuant to the Shipping Act 1998.

**51. Dangerous Goods** - The Authority shall control the movement, loading, discharging, handling and storage of dangerous goods within a port or its approaches and in particular and without limiting the generality of the foregoing may -

- (a) Declare any goods to be dangerous goods;
- (b) Direct the navigation and place of berthing of any vessel;
- (c) Require dangerous goods to be stowed in containers and on board vessels in accordance with the International Maritime Dangerous Goods Code;
- (d) Direct and control lighterage, landing, loading, discharging, conveying storage and handling of dangerous goods;
- (e) Prohibit, or permit unconditionally, or subject to conditions and restrictions, the movement, storage, or stowage of any kind of dangerous goods with any other goods;
- (f) Direct the times at which dangerous goods may be moved, stored or stowed;

- (g) Take such steps as it deems necessary to protect persons and property from danger.

## **PART X**

### **Offences**

**52. Obstructing Authority in the performance of its duty** - Any person who at any time hinders, obstructs or molests the Authority or any of its employers, agent or contractors in the performance and execution of their duty or of anything which they are respectively empowered or required to do by virtue or in consequence of this Act, or removes any work set up for the purpose of indicating any level or direction necessary to the executing of works authorised by this Act, commits an offence and shall be liable on conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding six months, or to both.

**53. False returns** - Any person who makes, either knowingly or recklessly, any statement which is false in any material particular in any return, claim or other document which is required or authorised to be made by or under the provisions of this Act commits an offence and shall on conviction be liable to a fine of \$10,000, or to imprisonment for a term not exceeding six months, or to both.

**54. False information as to tonnage, etc.** - Any master, owner or agent of a vessel entering or leaving a port or coming alongside or departing from a wharf in a port who gives false information of the tonnage, draught, length or beam of such vessel to any employee of the Authority authorised to ascertain the same commits an offence and shall on conviction be liable to a fine not exceeding \$20,000, or to imprisonment for a term not exceeding six months, or to both.

**55. Willful damage to port works and property** - Any person who willfully removes, breaks, destroys or in any other

way damages or injures any port works or any property belonging to the Authority or who hinders or willfully prevents such port works or property from being used or operated in the manner in which it is intended to be used or operated commits an offence and shall be liable on conviction to a fine not exceeding \$20,000, or to imprisonment for a term not exceeding 1 year, and in addition shall pay by way of compensation to the Authority, such sum as the Court may determine.

**56. Offences in connection with safety of vessels, etc. -**

Any person who in any port or in approaches -

- (a) Willfully and without lawful excuse loosen or removes from its moorings or from its fastenings in or alongside any anchorage or wharf, any vessel without leave or authority from the master or owner of such vessel or person in charge of such anchorage or wharf;
- (b) Without the permission of the Port master or any lawful excuse discharges any firearm except for the purpose of making a signal of distress or for other purpose as may be allowed under any written law;
- (c) Moves, damages or otherwise interferes with any navigation mark;
- (d) Fumigates by whatever means any vessel in the port, or boils or heats any pitch, tar, resin, turpentine oil or other inflammable oils or liquids of any kind on board any vessel; or carries out any welding or cutting using gas or electrical appliances without the permission of the Port Master;
- (e) Uses a naked light when drawing off spirits, turpentine oil or other inflammable oils or liquids of any kind on board any vessel,

commits an offence and shall be liable on conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 2 years, or to both.

**57. Pollution of waters of a Port-**(1) Every person who throws, discharges, or deposits, or causes, suffers, or procures to be thrown, discharged, or deposited into any waters of a port, any harmful substance commits an offence against this Act.

(2) It shall be a defence to any prosecution under subsection (1) of this section if the defendant proves that the action complained of was necessitated by reason of an emergency imperiling life, or was caused by unavoidable accident, collision or stranding.

(3) Every person who commits an offence against this section -

(a) Is liable upon conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 2 years or both; and

(b) Is also liable upon conviction to pay such amount as the Court may assess in respect of the expenses and costs that have been incurred or will be incurred in removing or cleaning up or dispersing any harmful substance to which the offence relates.

(4) For the purposes of this section, "harmful substance" has the meaning given to it in the Shipping Act 1998.

## **PART XI**

### **Miscellaneous Provisions**

**58. Master, owner, etc., answerable for damage-**(1) In every case in which any damage is done to any property of the Authority by any vessel or by any person employed thereon, the cost of making good the damage may be recovered by the Authority from the master, owner or person in charge of the vessel.

(2) The Authority may detain any such vessel until the cost of making good the damage has been paid, or security, therefore has been given to the Authority or paid into the Court of Competent Jurisdiction.

**59. Powers of arrest-**(1) The Authority shall make proper provision for the security of ports and the premises and property of the Authority, and any employee of the Authority authorised in writing by the General Manager, either generally or in any particular case, may arrest without warrant any person found committing, or whom he has reason to believe has committed, an offence under this Act.

(2) A person arrested under this section shall forthwith be handed over to the Police.

**60. Power to compromise** - The Authority may compound or compromise, for or in respect of any claim or demand made against it, for such sum of money or other compensation as it considers sufficient.

**61. Evidence of identity** - Any employee of the Authority who reasonably believes that any person has committed an offence against the provisions of this Act may require him to furnish evidence of his identity. Any such person who refuses to furnish such evidence or who willfully misstates such information commits an offence and on conviction shall be liable to a fine not exceeding \$500.

**62. Authorised employee of Authority may prosecute** - Any authorised employee of the Authority may conduct a prosecution under this Act on behalf of the Authority.

**63. Apparatus, etc., not subject to distress, etc.** - When any apparatus or equipment belonging to the Authority is placed in or upon any place not being under control of the Authority, such apparatus or equipment shall not be subject to distress nor be taken in execution under process of any Court or in any proceedings in bankruptcy.

**64. Regulations-**(1) The Head of State, acting on the advice of Cabinet, may make Regulations for the maintenance, control and management of any port or the approaches thereto and generally for giving effect to and carrying out the purposes of this Act including -

(a) Regulating vessel and vehicular traffic;

- (b) Prescribing all such things as may be necessary with respect to harbour lights, buoys, beacons and signals and preventing and providing for the removal of obstructions or impediments to navigation;
- (c) Regulating, declaring and defining the wharves and ferry terminals where goods shall be discharged from or loaded on or into vessels and the manner in which and the conditions under which such discharging and loading shall be carried out, and for varying the position of vessels discharging or loading;
- (d) Regulating the erection or construction of wharves and ferry terminals in a port or encroaching in any way on the waters thereof;
- (e) Providing minimum standards for using machinery and appliances (including machinery and appliances carried on a vessel) deployed in loading or unloading of goods;
- (f) Keeping free passages of such width as considered necessary within a port and along or near the wharves, passenger jetties, moorings and other similar works in or adjoining the same and marking out the spaces so to be kept free;
- (g) Regulating the anchoring, fastening, mooring and unmooring and warping of all vessels and the use of warps, mooring buoys, chains and other moorings and the granting of permission, on such conditions as the Authority may think fit, for the keeping or placing of anchors or private moorings or buoys;
- (h) Regulating the use of anchorage, wharves and ferry terminals and the movement of vessels, persons and vehicles and preventing obstruction at anchorages and on wharves and ferry terminals and ensuring the safety of the same and any cargo thereon;

- (i) Regulating the use by vessels of whistles, sirens and other like instruments and the signals to be used and measures to be taken in case of fires in a port;
- (j) Enforcing and regulating the use of navigation lights, signals and signal lights by vessels and the steps to be taken by vessels navigating in the waters of a port for the avoidance of accidents;
- (k) Requiring the master of every vessel to report his arrival, to produce the certificate of registry on demand, and to deliver a copy of every bill of lading or manifest of the cargo or other account of goods intended to be discharged;
- (l) Specifying the information to be supplied by the masters, owners and other persons in respect of vessels arriving and departing, and of goods loaded or discharged in a port, and the time and manner in which such information shall be supplied;
- (m) Reregulating, controlling and supervising all activities carried on within a port and, if found satisfactory, providing for the licensing thereof;
- (n) Regulating the reception, storage and removal of goods within and from the premises of the Authority, and declaring the procedure to be followed for taking charge of goods which have been damaged before landing or are alleged to have been so damaged;
- (o) Regulating the examination and checking of any vehicle, case, bag or luggage where there is reason to believe that any person has in his possession any goods on which duties or dues or fees have not been paid;
- (p) Regulating the keeping clean of basins and other works of the Authority and the waters of any port and the approaches to any port and preventing oil, rubbish or other things being

discharged or thrown or entering therein or thereon;

- (q) Regulating towage of or other assistance to vessels and the terms and conditions of such towage or assistance;
- (r) Licensing any vessels, canoes or traditional craft for any purpose and fixing fees to be paid for licensing of any such vessels, canoes or traditional craft;
- (s) Prescribing the terms and conditions for the sale and supply of fresh water by the Authority;
- (t) Providing for the cleaning, fumigating, and disinfecting of buildings, wharves, containers, vessels and cargo;
- (u) Regulating the safe and convenient use of the wharves, ferry terminals, landing places and buildings maintained by the Authority;
- (v) Regulating the use or occupation of the foreshore and the bed of any lagoon tidal area or navigable waters forming part of a port or included in the approaches to a port;
- (w) Regulating the use in ports of motor launches, yachts, pleasure craft, surfboards, and water skis and other craft (including aircraft);
- (x) Limiting the waters of any port that may be utilised for bathing, and regulating bathing on or near any foreshore;
- (y) Regulating the time when dues on goods are to be paid;
- (z) Settling the mode of payment of dues or rates leviable under this Act, facilitating their collection and preventing their evasion;
- (aa) Prohibiting any operation which in the opinion of the Authority is undesirable;
- (bb) Prescribing offences in respect of the contravention of or non compliance with any regulation made under this Act or any requirement or direction made or given pursuant

to any such regulation and prescribing penalties not exceeding \$1,000 or to imprisonment for a term not exceeding 3 months or both, for such offences;

(cc) Excluding or limiting the liability of the Authority in respect of anything done pursuant to any Regulations made under this Act.

(2) The Authority may, with the approval of the Minister, exempt any vessel or any class or description of vessel from all or any of the provisions of any Regulations made pursuant to the preceding subsection.

**65. No effect to Shipping Act** - Except as otherwise provided, nothing in this Act shall extend to, repeal or alter any of the provisions of the Shipping Act 1998, or to exempt the Authority from the provisions of that Act.

**66. Act to bind State** - This Act shall bind the State.

**67. Repeals and savings**-(1) The regulations referred to in Schedule 2 to this Act shall continue in force as if made under this Act.

(2) Where in any regulations there appears a reference to a Harbourmaster or to a Port Administrator that reference shall be read as if it were a reference to a Port Master.

## **SCHEDULE 1**

LAND TO BE TRANSFERRED TO THE AUTHORITY

## **SCHEDULE 2**

Port Control Regulations 1939 (Gazette 1939 p.737)  
Port Control Amendment Regulations 1960 (1960/14)

Port Control Regulations 1939 Amendment No.1 (1970/8)

Port Control Regulations 1939 Amendment No.2 (1976/1)

District Wharf Fees Regulations (Mulifanua and Salelologa) 1959 (1959/8) as amended by the Fa'asaleleaga Water Supply Act 1969

District Wharf Regulations (Salelologa) 1959 (1959/9) as amended by the Enactments Amendment and Repeal Ordinance 1960 (sec.2), Reprint of Statutes Act 1972 (sec.3(f)) and the Ministerial Portfolios Act (1976) (sec.2(1))

District Wharf Regulations (Salelologa) 1959 Amendment No.2 (W.S.R. 1966/5)

Port Charges Regulations 1984 - (1984/4A)

Port charges Amendment Regulations 1987 - (1987/2)

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