

TRADE, COMMERCE AND INDUSTRY

ANALYSIS

TITLE

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|--|--|
| 1. Short title and commencement | 11. Functions of Commodities Pricing and Marketing Information Unit |
| 2. Interpretation | 12. Appropriations |
| 3. Minister of Trade, Commerce and Industry | 13. Regulations |
| 4. Department of Trade, Commerce and Industry | 14. Amendment to Commerce Act 1978 |
| 5. Principal functions of Department | 15. Repeal of Economic Development Act 1965 and consequential General Amendments |
| 6. Secretary of Trade, Commerce and Industry | 16. Repeal of Produce Marketing Act 1977 and revocation of regulations |
| 7. Delegation of Minister's powers | |
| 8. Delegation of Secretary's powers | |
| 9. Appointment of officers and staff | |
| 10. Commodities Pricing and Marketing Information Unit | |

THE TRADE, COMMERCE AND INDUSTRY ACT 1990

1990

No.16

AN ACT to amend consolidate and restructure the law relating to Trade, Commerce and Industry to repeal the Economic Development Act 1965; and for associated purposes. *(29 August 1990)*

1. Short title and commencement - (1) This Act may be cited as the Trade, Commerce and Industry Act 1990.

(2) This Act shall come into force on such date as shall be specified by the Head of State by Order and different parts of this Act may be brought into force at different times.

2. Interpretation - In this Act unless the context otherwise require:

"**Department**" means the Department of Trade, Commerce and Industry.

"**Minister**" means the Minister of Trade, Commerce and Industry.

"**Secretary**" means the Secretary of Trade, Commerce, and Industry.

3. Minister of Trade, Commerce and Industry - There shall be a Minister of Trade, Commerce and Industry for Western Samoa whose functions shall be to control and direct the policy of the Department, and who may exercise such powers as are reasonably necessary for the effective performance of the functions of the Department.

4. Department of Trade, Commerce and Industry - There is hereby constituted and established a department of the Government of Western Samoa to be known as the Department of Trade, Commerce and Industry which under the control of the Minister shall be charged with the administration of this Act and any regulations to be made thereunder, together with such other functions as may from time to time be lawfully conferred upon it.

5. Principal Functions of Department - (1) The principal functions of the Department shall be to:

- (a) Advise the Minister on all matters affecting the development of Western Samoa's trading relationships with other countries;
- (b) Represent, when appropriate and deemed necessary by the Minister, Western Samoa at meetings, conferences or similar gatherings where matters of trade affecting or invoicing the country are discussed or considered;
- (c) Negotiate trade agreements on behalf of the Minister;
- (d) Encourage and assist the promotion of Western Samoan produce and products, either in its own right or in cooperation with any organisation involved in exporting, including exhibiting at trade fairs;

- (e) Establish a Commodities Pricing and Marketing Information Unit within the department;
- (f) Facilitate the obtaining of funds for the purpose of trade development and promotion, including discussion and negotiation with aid donors;
- (g) Advise the Minister on all matters affecting the growth and development of industry, commerce and trade in Western Samoa;
- (h) Advise Cabinet, through the Minister, on the criteria for the development of industry and commerce to be applied in evaluating approvals under any incentives legislation for the time being in force in Western Samoa;
- (i) Administer any incentives legislation for the time being in force in Western Samoa, except where such legislation otherwise specifies;
- (j) Administer the Commerce Act 1978;
- (k) Promote the development of small businesses, including the setting up of a small business agency within the department to disseminate knowledge of sound business and commercial practice to Western Samoans and organise and administer, as necessary, courses and training;
- (l) Undertake research into any aspect of domestic trade, commerce and industry, including the conducting of surveys, gathering statistics and publishing reports from time to time;
- (m) Evaluate investment proposals suitable for funding by the Government and/or aid donors suitable reports or project documents;
- (n) Facilitate the obtaining of funds for the purpose of developing the commercial sector of Western Samoa, including discussions with aid donors;

- (o) Liaise with the Western Samoan Visitor's Bureau for the development of tourism in Western Samoa including development of facilities for the entertainment of visitors to Western Samoa;
- (p)(1) Act as an agent for and on behalf of a beneficial owner of any customary land or of any interest therein who in terms of section 5 of the Alienation of Customary Land Act 1965 desires that the Minister of Lands, Survey and Environment shall grant a lease or licence of such land or of any interest therein for hotel or industrial purposes:
 - (i) to negotiate and deal with prospective leasees or licensees of such customary land and interests therein for the best rental terms and conditions of a proposed lease or licence that can be obtained in the circumstances;
 - (ii) to enter into an agreement to lease or licence with a prospective leasee or licensee, which agreement shall bind upon all beneficial owners of such customary lands or interests therein;
 - (iii) to make written application in that behalf to the Director of Lands pursuant to section 5 of the Alienation of Customary and Act 1965;
 - (iv) the Department through the Minister shall for the purposes of section 6 of the Alienation of Customary Land Act 1965 be deemed to be the agent of all beneficial owners of the customary lands or interests therein proposed to be leased or licensed, to whom the Director or the Financial Secretary may account for the rent or consideration to be derived from the lease or licence of that land or interest.

(2) Except as are in this subsection provided, this subsection shall be subject to the provisions of the Alienation of Customary Land Act 1965.

- (q) Establish a Board which shall be called the Trade Commerce and Industry Development Board (hereinafter called "the Board") in accordance with the provisions of this subsection.

(2) The functions of the Board are:

- (a) To be a forum where members representing the trading, commercial and industrial communities within Western Samoa and representatives of the Government of Western Samoa can freely exchange views and hold regular dialogue with the view to resolving problems that are hampering progress and restraining the advancement of trade, commerce and industry in Western Samoa;
- (b) To enquire into and to make recommendations to the Minister as to ways and means of improving facilitating and enhancing the development of trade, commerce and industry in Western Samoa;
- (c) To monitor and report regularly to the Minister as to the rate of inflow of new businesses into Western Samoa from overseas countries and as to the rate of growth of trading, commercial and industrial businesses in Western Samoa;
- (d) To make recommendations to the Minister as to the manner in which the Department may exercise, implement and carry out any of its principal functions as stipulated in section 5 of this Act to the best interest of the Independent State of Western Samoa.

(3) The members of the Board are:

- (a) The Minister, who shall be the Chairman;
- (b) The Financial Secretary;
- (c) The Secretary Ministry of Transport;
- (d) The Comptroller and Collector of Customs;

- (e) The Director of Agriculture Forests and Fisheries;
- (f) The Commissioner of Labour;
- (g) Representatives of Traders and Importers;
- (h) Representative of Manufacturers;
- (i) Representative of Agriculture Exporters;
- (j) Representative of Women in Business;
- (k) Representative of General Constructors;
- (l) Representative of Taro Planters;
- (m) The Secretary of Trade Commerce and Industry, who shall be the Secretary of the Board.

(4) The members of the Board under subparagraphs ((g), (h), (i), (j), (k) and (l) of the preceding paragraph (3) of this subsection shall be appointed by the Head of State acting on the advice of Cabinet.

(5):

- (a) Every member appointed by the Head of State under the preceding paragraph (4) shall hold Office for a term of 3 years and shall be eligible for reappointment;
- (b) An appointed member may at any time resign his office by notice in writing to the Board;
- (c) The Head of State, acting on the advice of Cabinet may remove at any time an appointed member:
 - (i) for disability, neglect of duty, misconduct, or bankruptcy; or
 - (ii) if he is satisfied that the appointed member has left Western Samoa permanently; or

- (iii) if the appointed member is absent from 3 consecutive meetings of the Board without the permission of the Board;
- (d) If an appointed member 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 first named person's term of office would have expired had he not ceased to be a member as aforesaid.

(6):

- (a) Meetings of the Board shall be held at such times and places as the Board shall from time to time appoint;
- (b) At all meetings of the Board 7 members constitute a quorum;
- (c) The chairman shall preside at all meetings of the Board at which he is present, but in the event of his absence the Board may appoint one of its members to be Chairman;
- (d) At any meeting of the Board the person presiding shall have a deliberative vote and in the case of an equality of votes he shall have a casting vote;
- (e) A decision of the majority of the members present at a meeting of the Board shall be a decision of the Board;
- (f) The Board may regulate its procedure in such manner as it thinks fit, and may in its discretion conduct its meeting either in public or in private.

(7) Every member of the Board shall be remunerated as Cabinet from time to time determine.

(8) The Secretary shall be responsible for the taking of minutes of meetings of the Board and for the safe keeping thereof in a Minute Book.

6. Secretary of Trade, Commerce and Industry - (1)

There shall be a Secretary of Trade, Commerce and Industry who shall be the Administrative Head of the Department.

(2) The post of Secretary of Trade, Commerce and Industry shall be a special post under the Public Service (Special Posts) Act 1989 and its holder shall be appointed and hold office under the provisions of that Act.

(3) The person holding the office of Director of Economic Development immediately before the coming into force of this Act shall pro tempore and pending an appointment under the Public Service (Special Posts) Act 1989, act as the Secretary of Trade, Commerce and Industry as if he had been appointed before the coming into force of that Act.

7. Delegation of Minister's powers - (1)

The Minister may by writing under his hand either generally or particularly, delegate to the Secretary all of the powers which are conferred upon him or delegated to him as Minister of Trade, Commerce and Industry by or pursuant to this or any other Act:

PROVIDED HOWEVER THAT this power of delegation shall not include power to delegate to the Secretary the power of the Minister under this section.

(2) Subject to any general or special discretion given or conditions attached by the Minister, the Secretary may exercise any powers delegated to him as aforesaid in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

(3) Where the Secretary purports to act pursuant to any delegation under this section, he shall be presumed in the absence of proof to the contrary to be acting in accordance with the terms of the delegation.

(4) Every such delegation shall be revocable at will and no such delegation shall prevent the exercise of any power by the Minister.

(5) Unless and until such delegation is revoked it shall continue in force according to its tenor. In the event of the Minister by whom any such delegation has been made ceasing to hold office, it shall continue to have effect as if made by the person for the time being holding office as Minister and in the event of the Secretary to whom such delegation has been made ceasing to hold office, it shall continue to have effect as if made to the person for the time being holding office as Secretary or, if there is no Secretary in office, or the Secretary is absent from duty, to the person for the time being lawfully directed to act in the place of the Secretary.

8. Delegation of Secretary's powers - (1) The Secretary may from time to time by writing under his hand either generally or particularly, delegate to any such officer of the Department or to any committee constituted or administered pursuant to this Act as he thinks fit all or any of the powers exercisable by him pursuant to any enactment including any power delegated to him pursuant to any enactment but not including this present power of delegation:

PROVIDED THAT the Secretary shall not delegate any power delegated to him by the Minister without the written consent of the Minister.

(2) Subject to any special or general direction given or attached by the Secretary, the officer or committee to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him or it directly by this section and not by delegation.

(3) Every person or committee purporting to act pursuant to any delegation under this section shall be presumed in the absence of proof to the contrary, to be acting in accordance with the terms of the delegation.

(4) Any delegation under this section may be made to a specified officer or to officers of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.

(5) Every such delegation under this section shall be revocable at will and no such delegation shall prevent the exercise of any power by the Secretary.

(6) Every such delegation shall, until revoked, continue in force according to its tenor, notwithstanding that the Secretary by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that Secretary.

9. Appointment of officers and staff - (1) The Public Service Commission of Western Samoa may from time to time appoint such other officers and employees as may be desirable for the administration of this Act.

(2) All such officers and other employees of the Department shall act under the direction of the Secretary in the exercise and performance of the powers, duties and functions conferred or imposed upon them by this or any other Act.

(3) All persons who immediately prior to the commencement of this Act were pursuant to the Public Service Act 1977 officers and employees in the Department of Economic Development shall continue to be public servants as officers and employees in the Department of Trade, Commerce and Industry.

10. Commodities Pricing and Marketing Information Unit - There shall be within the Department and responsible to the Secretary a division to be known as the Commodities Pricing and Marketing Information Unit which shall comprise a supervisor to be known as the Research Supervisor and such other staff as may be necessary for the proper performance of its functions.

11. Functions of Commodities Pricing and Marketing Information Unit - The functions of the Commodities Pricing and Marketing Information Unit shall be to assist the growth of agricultural exports by researching, compiling and disseminating information on international prices and markets, and by providing advice on quality standards and controls, market research, export promotion and other

export market development activities; and by reporting to the Minister on those matters and matters of a like nature.

12. Appropriations - Monies appropriated by Parliament to the use of the Department of Economic Development during the year ending on the 31st December 1990 and not used by that department at the date this Act comes into force shall be deemed from the date this Act comes into force to have been appropriated to the use of the Department of Trade, Commerce and Industry.

13. Regulations - The Head of State, acting on the advice of Cabinet may from time to time make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

14. Amendment to Commerce Act 1978 - The Commerce Act 1978 is amended as follows:

- (a) Section 2 of that Act is amended by omitting the words "Minister of Customs" where they appear in the definition of the word "Minister" and substituting the words "Minister of Trade, Commerce and Industry";
- (b) Subsection (1) of section 3 of that Act is amended by omitting the words "Customs Department" and substituting the words "Department of Trade, Commerce and Industry";
- (c) Section 6 of that Act is amended by omitting the words "Comptroller of Customs" and substituting the words "Secretary of Trade, Commerce and Industry".

15. Repeal of Economic Development Act 1965 and consequential general amendments - (1) The Economic Development Act 1965 is repealed.

(2) Wherever in any Act there is a reference to the Department of Economic Development, the Minister of Economic Development or the Director of Economic Development such reference shall be read as if it were a reference to the Department of Trade, Commerce and Industry,

the Minister of Trade, Commerce and Industry or the Secretary of Trade, Commerce and Industry as the case requires.

16. Repeal of Produce Marketing Act 1977 and revocation of regulations - (1) The Produce Marketing Act 1977 is repealed.

(2) The Produce Marketing Regulations 1978 are revoked.

NOTES

The Trade Commerce and Industry Act 1990 appearing in this Reprint comprises that Act with the addition of sections 5(p) and 5(4) as contained in the 1994 Amendment Act.

**The Trade Commerce and Industry Act 1990
is administered in the Department of Trade Commerce and Industry**