



SAMOA

SECRET COMMISSIONS ACT 1975

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SECRET COMMISSIONS ACT 1975

1975

No.6

AN ACT for the prohibition of secret commissions.

[Assent and commencement date: 11 August 1975]

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

2. Interpretation – In this Act, unless the context otherwise requires:

“agent” includes any person who is or has been, or desires or intends to be, employed by or acting for any other person, whether as agent, servant, broker, auctioneer, architect, solicitor, director, or in any other capacity whatever, either alone or jointly with any other person;

“consideration” means valuable consideration of any kind; and particularly includes discounts, commissions, rebates, bonuses, deductions, percentages, employment, payment of money (whether by way of loan, gift, or otherwise howsoever), and forbearance to demand any money or valuable thing;

“principal” includes any person by whom an agent is or has been, or intends or desires to be, employed, or for whom an agent acts or has acted, or intends or desires to act.

3. Persons taken to be agents within the meaning of this

Act – (1) For the purposes of this Act:

- (a) an officer of a corporation and a member of a governing body of a corporation are taken to be an agent of the corporation;
- (b) an officer or member of any Board, Council, Commission, Committee, or other body of persons, whether incorporated or unincorporated, charged by statute with any public functions is taken to be an agent of that Board, Council, Commission, Committee, or other body;
- (c) a person in the service of the Government, or acting for or on behalf of the Government, or holding any office in the Public Service, is taken to be an agent of the Government;
- (d) a partner in a firm is taken to be an agent of the firm;
- (e) an executor, administrator, or trustee under a will, intestacy or trust is taken to be an agent of the beneficiaries thereunder;
- (f) the administrator or committee of the estate of a mentally defective person is taken to be the agent of that person;
- (g) an arbitrator, umpire, or valuer is taken to be an agent of a party to the arbitration or valuation;
- (h) a liquidator of a company is taken to be an agent of the company.

(2) If under this Act any agent is deemed to be the agent of 2 or more principals in respect of the same matter, this Act applies to each of those principals in the same manner as if he or she was the sole principal.

(3) Nothing in this section restricts in any manner the meaning of “agent” or “principal” as used in this Act.

4. Corrupt gift to agent without consent of principal an offence – (1) A person commits an offence who corruptly gives, or agrees or offers to give, to an agent, without the consent of his or her principal, any gift or other consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the principal’s affairs or business (whether such act is within the scope of the agent’s authority or the course of his or her employment as agent or not), or for showing or having shown favour or disfavour to any person in relation to the principal’s affairs or business.

(2) Any gift or other consideration given or offered or agreed to be given to any parent, husband, wife, or child of any agent, or to his or her partner, clerk, or servant, or (at the agent’s request or suggestion) to any other person, is taken for the purposes of this section to have been given or offered or agreed to be given to the agent.

5. Acceptance of such gifts by agent an offence – (1) An agent commits an offence who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, or solicits from any person, for himself or herself or for any other person, without the consent of his or her principal, any gift or other consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the principal’s affairs or business (whether such act is within the scope of the agent’s authority or the course of his or her employment as agent or not), or for showing or having shown favour or disfavour to any person in relation to the principal’s affairs or business.

(2) An agent who diverts, obstructs, or interferes with the proper course of the affairs or business of his or her principal, or fails to use due diligence in the prosecution of such affairs or business, with intent to obtain for himself or herself or for any

other person any gift or other consideration from any person interested in such affairs or business, is deemed to have corruptly solicited a consideration within the meaning of this section.

6. Duty of agent to disclose pecuniary interest in contract – (1) An agent commits an offence who makes a contract on behalf of his or her principal and fails to disclose to his or her principal, at the time of making the contract or as soon as possible thereafter, the existence of any pecuniary interest which the agent has in the making of the contract, unless to the knowledge of the agent the existence of such pecuniary interest is already known to his or her principal.

(2) For the purposes of this section any pecuniary interest which a parent, husband, wife, child, or partner of the agent has in the making of the contract is taken to be the pecuniary interest of the agent, unless he or she proves that he or she had no knowledge of that interest at the time he or she made the contract.

(3) For the purposes of this section, an agent is taken not to have any pecuniary interest in the making of a contract by reason merely of the fact that he or she or any person mentioned in subsection (2) is a shareholder in an incorporated company having more than 20 members.

7. Giving false receipt, invoice, etc., to agent an offence – A person commits an offence who with intent to deceive the principal, gives to any agent, or signs or otherwise authenticates for the use of any agent, any receipt, invoice, account, or other document of any nature whatsoever in relation to the affairs or business of the agent or his or her principal which contains any statement which is false, defective, or misleading in any material particular, or which omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed, or agreed to be made, given, or allowed, in relation to the matters referred to in that document.

8. Delivery of false receipt, etc., to principal an offence – An agent commits an offence who delivers or presents to his or her principal any receipt, invoice, account, or other document

of any nature whatsoever in relation to the business or affairs of his or her principal which to the knowledge of the agent is false or defective in any material particular, or is in any way likely to mislead the principal, or which to the knowledge of the agent omits to state the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed, or agreed to be made, given or allowed, in relation to the matters referred to in that document, or which to the knowledge of the agent omits to disclose the fact of any gift or other consideration having been received by or promised to the agent in respect of those matters, unless in any such case the fact which is not disclosed is, to the knowledge of the agent, already known to the principal at the time when the document is delivered or presented to him or her.

9. Receiving secret reward for procuring contracts an offence – (1) A person commits an offence who advises any person to enter into a contract with a third person and receives or agrees to receive from that third person, without the knowledge and consent of the person so advised, any gift or consideration as an inducement or reward for the giving of that advice or the procuring of that contract, unless the person giving that advice himself or herself acts as the agent of the third person in entering into the contract, and is to the knowledge of the person so advised the agent of that third person.

(2) For the purposes of this section, a person is taken to advise another person to enter into a contract if he or she makes to that other person any statement or suggestion with intent to induce him or her to enter into the contract.

10. Aiding and abetting offences – A person commits an offence who aids, abets, counsels, or procures, or is in any way directly or indirectly knowingly concerned in or privy to the commission of any offence against this Act, or the commission outside Samoa of any act in relation to the affairs or business of a principal residing or carrying on business in Samoa which if committed in Samoa would be an offence against this Act.

11. Offences by persons acting on behalf of agents – A person commits an offence who, with or without authority, does on behalf of any other person who is an agent any act which if

done by that agent himself or herself would be an offence against this Act.

12. Except as provided in this section, customary nature of gift to be no defence – (1) Nothing in this Act prohibits or renders illegal any recognised practice or usage of any trade or calling existing at the time of the passing of this Act if the Court before which the matter of such practice or usage is in question is satisfied that such practice or usage is honest and reasonable; and, in so determining, the Court may have regard to the circumstance that the commissions, rebates, or allowances paid or made by the third party to the agent under such practice or usage were prior to this Act lawfully receivable by the agent without any breach of his or her duty towards his or her principal; or the circumstance that the commissions, rebates, or allowances paid or made would not in any case be paid or allowed by such third party to the principal; or the circumstances that the same were paid or allowed in respect of services lawfully rendered by the agent to such third party without injury or loss to the principal and without any breach by the agent of his or her duty towards his or her principal.

(2) Except as provided by this section, evidence is not admissible in any proceeding for an offence against this Act to show that any such gift or consideration as is mentioned in this Act is customary in any trade or calling, nor shall the customary nature of any such gift or consideration be any defence in such proceedings.

13. Consent of Attorney-General necessary for prosecution – (1) No prosecution for an offence against this Act shall commence without the consent of the Attorney General.

(2) The consent of the Attorney-General may be granted without notice to the accused, and it is not necessary in any information to state that such leave has been granted, or any term thereof. Objections to an information for want of the consent or for want of conformity to any term thereof is taken before a Judge, or by motion to dismiss the information, before the trial of the accused commences, and not otherwise; and if a Judge is satisfied that the consent has not been granted; or that

any term thereof has not been conformed to, the information is dismissed.

14. Penalty on conviction – A person convicted of an offence against this Act is liable:

- (a) for a corporation, to a fine not exceeding 50 penalty units; and
- (b) for any other person, to a fine not exceeding 20 penalty units or to imprisonment for any period not exceeding 2 years, or both.

15. Incriminating answers and discovery – No person is, in any civil or criminal proceedings, to be excused from answering any question put either *viva voce* or by interrogatory, or from making any discovery of documents, on the ground that the answer or discovery may incriminate or tend to incriminate him or her in respect of an offence against this Act; but his or her answer is not admissible in evidence against him or her in any criminal proceedings for an offence against this Act.

REVISION NOTES 2008 – 2019

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division from 2008 to 2019 respectively under the authority of the Attorney General given under 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) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a”
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - (iii) “shall have” changed to “has”
 - (iv) “shall be guilty” changed to “commits”

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- (v) “notwithstanding” changed to despite”
- (vi) “pursuant to” changed to “under”
- (vii) “it shall be lawful” changed to “may”
- (viii) “it shall be the duty” changed to shall”
- (ix) Numbers in words changed to figures
- (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed
- (xi) “under the hand of” changed to “signed by”

The following amendment was made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

By the *National Prosecution Office Act 2015 No.38* which commences on 1 January 2016:

Section 13 For subsection (1), omit “Attorney General” and substitute “Director of Public Prosecutions”.

By the *Constitution Amendment Act (No. 1) 2017, No. 8*:

Section 13 For subsection (1), omit “Director of Public Prosecutions” and substitute “Attorney General”.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry of Justice and Courts Administration.*
