



SAMOA

TOURISM DEVELOPMENT ACT 2012

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Schedule 1

TOURISM DEVELOPMENT ACT 2012

2012,

No. 16

AN ACT to provide for the sustainable development, promotion and management of the tourism sector in Samoa through

effective planning, administration, regulation, and for related purposes.

[Assent and commencement date: 16 March 2012]

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

**PART 1
PRELIMINARY**

1. Short title and commencement – (1) This Act may be cited as the Tourism Development Act 2012.

(2) This Act commences on the date of assent by the Head of State.

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

“Auditor” means the Controller and Auditor General of Samoa;

“Authority” means the Samoa Tourism Authority continued under section 5;

“Board” means the Board of Directors of the Authority;

“Chairperson” means the Chairperson of the Board;

“Minister” means the Minister responsible for Tourism;

“tourism accommodation” includes all premises and places where businesses offer accommodation to guests, whether the premises are titled as a resort, hotel, motel, “time-share” operation, tourist villas, guest house, beach fale, backpackers establishment, home-stay or any other designation of accommodation;

“tourism business” includes any business in Samoa which provides:

- (a) tourism accommodation services; and
- (b) in-bound tour services and services provided by destination management companies; and
- (c) dive operations and live-aboard dive boats; and
- (d) tourism operations providing—
 - (i) adventure and other recreational tours, activities and attractions;
 - (ii) village visits, visits to customary fishing grounds and other places of significance to Samoan culture;

- (e) tour bus services; and
- (f) rental car services; and
- (g) any other service, product, facility or activity primarily provided for tourists and which is prescribed by regulations made under this Act to be a tourism business.

PART 2 APPLICATION OF THIS ACT

3. Objectives of this Act and the Guiding Principles – (1)

The objectives of this Act include:

- (a) preserving the integrity of the tourism sector and promoting its sustainable development in Samoa through effective planning and promotion, and the proper regulation of tourism businesses; and
- (b) promoting the orderly development of the tourism sector in Samoa through the application of a regulatory regime which meets the aspirations of government regulatory agencies and the tourism industry participants; and
- (c) involving the tourism industry and government stakeholders in the development of tourism policies and the resolution of issues arising within the tourism industry; and
- (d) implementing systems of licensing of hotels and other tourism businesses which permit the effective enforcement of industry standards and legal requirements applying for the benefit of tourism; and
- (e) recognising tourism industry standards and systems of ratings and accreditations, and supporting the effectiveness of these through the regulatory processes under this Act.

(2) When implementing this Act, and applying its provisions to any matter affecting tourism in Samoa, the following guiding principles are to be observed as far as is practicable to promote the interests of tourism:

- (a) tourism development shall —
 - (i) be sustainable and for the general benefit of Samoans;

- (ii) be consistent with existing traditions, customary practices and rights; and
- (iii) recognise the authority of the institutions of community governance in Samoa; and
- (b) environmental impacts from tourism developments are to be minimised, and due regulatory processes are to be applied to ensure the protection and conservation of Samoa's biodiversity, water resources and terrestrial and marine environments; and
- (c) adverse and undesirable impacts of tourism are to be addressed by effective controls over criminal activity, the generation of wastes, the introduction of diseases and the imitation of customary rights to intellectual property; and
- (d) public safety and security is to be preserved.

4. Application of other laws applying to the sector and the Authority – (1) Nothing in this Act affects the operation of any other law prescribing requirements applying to tourism businesses, including laws dealing with the following:

- (a) registration and regulation of foreign investment;
- (b) land tenure, and dealing with land and interests in land;
- (c) development planning and control;
- (d) building regulations;
- (e) public health, sanitation, water quality and waste management;
- (f) environmental impact assessment, and the avoidance or minimisation of adverse effects on the environment;
- (g) land conservation and improvement;
- (h) fisheries and forestry;
- (i) labour and employment, and occupational safety and health;
- (j) revenue and customs laws;
- (k) business licensing;
- (l) liquor licensing;
- (m) fair trading and other aspects of commercial activity;
- (n) currency and exchange control;
- (o) transportation by land, sea and air;

(p) fire and emergency prevention and control.

(2) All government Ministries and agencies having responsibilities for administering and enforcing laws of the nature specified in subsection (1) shall formulate and assist in the formulation of procedures and arrangements which streamline the processes whereby tourism businesses can achieve compliance with the requirements applying under those laws to the fullest extent possible, without compromising the proper and effective application of those laws.

PART 3

THE SAMOA TOURISM AUTHORITY

5. Continuation of the Authority – (1) The Samoa Tourism Authority established under the Samoa Tourism Authority Act 1984 is continued under this Act, and shall operate and be managed in accordance with the provisions of this Act.

(2) The Management of the Authority shall be vested in its Board.

(3) A reference to the former Samoa Visitors Bureau in any law or instrument or document shall be read and construed as a reference to the Authority, unless the context requires otherwise.

6. Board of Directors – (1) The Board of the Authority comprises of not less than three (3) and not more than five (5) directors who are appointed by the Head of State on the advice of Cabinet in accordance with law and approved Government policy relating to the management of public bodies.

((2) Repealed by section 2 of the Miscellaneous (Boards of Public Bodies) Amendment Act 2020, No 6)

(3) Cabinet shall appoint 1 of the directors to be the Chairperson, and may appoint a Deputy Chairperson.

(4) No person may be appointed or continue to hold office as a director, while that person is a full-time salaried employee of the Authority.

(5) Unless the Board decides otherwise, the Chief Executive Officer must attend all Board meetings but shall have no voting rights.

(6) From 31 December 2011:

(a) no Member of Parliament or a person employed in the public service shall be a director or be re-appointed as a director unless Cabinet has

certified that such appointment or re-appointment, as the case may be, is necessary; and—

- (i) in the national interest; and
- (ii) that the Member of Parliament or the person has particular qualifications or business experience which the Authority requires on its Board and such qualifications or business experience cannot be found elsewhere; and

(b) where a Member of Parliament or a person employed in the public service is appointed or re-appointed under this section, the Member of Parliament or a person shall not receive remuneration or other benefits from the Authority for services as a director.

(7) The Authority is a body corporate with perpetual succession and a common seal and:

- (a) may enter into contracts; and
- (b) may conduct legal proceedings in its corporate name; and
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may generally do all such acts and things that are necessary for or incidental to the performance of its functions under this Act or any other law.

(8) The powers of the Authority are not affected by any vacancy in the membership of the Board.

(9) An appointed director shall be appointed for a period not exceeding 3 years, and is eligible for re-appointment:

PROVIDED THAT appointments made after the commencement of this Act may be made for varying terms of office to provide that subsequent appointments are made on a staggered basis.

(10) Every appointed director shall continue to hold office only until the appointment of his or her successor is effective, even if the term of his or her appointment has not expired.

(11) Subsection (9) does not apply in the case of a director who vacates office under section 7.

7. Extraordinary vacancies – (1) An appointed director may resign from office by delivering a notice in writing to that effect to the Minister.

(2) If an appointed director dies or resigns, or is removed from office, the director's office shall become vacant and the vacancy shall be filled in the manner in which appointment to the office was made.

(3) A person appointed to fill an extraordinary vacancy shall be appointed for the remainder of the term for which the vacating member was appointed.

8. Nominated alternate directors – (1) A director appointed under section 6 may appoint a senior officer from the Ministry, agency, firm, corporation or organisation to attend a meeting of the Board which he or she is unable to attend because of illness, absence or any other good cause.

(2) No alternate director appointed under this section may act as Chairperson of the Board.

(3) The appointment of any alternate director, and any act done by an alternate director or done by the Board while an alternate director is acting as such, shall not be questioned in any proceedings on the ground that the occasion for his or her appointment had not arisen or had ceased to exist.

9. Meetings of the Board – (1) Meetings of the Board shall be held at such times and at such places as the Board or the Chairperson shall determine.

(2) The Chairperson shall convene a meeting whenever required to do so by written notice to that effect by any 4 directors of the Board.

(3) At any meeting of the Board, 4 directors shall form a quorum.

(4) The Chairperson shall preside at every meeting at which he or she is present.

(5) If the Chairperson is for any reason absent from a meeting, the Associate Minister for Tourism shall preside as Chairperson, and in the event that both the Minister and the Associate Minister for Tourism are absent, the directors shall appoint one of their numbers to be Chairperson of that meeting.

(6) A question arising at a meeting of the Board shall be decided by a majority of the votes of the members present and voting.

(7) At a meeting of the Board, the Chairperson shall have a deliberate vote, and in the case of an equality of votes, the Chairperson shall also have a casting vote.

(8) Subject to the provisions of this Act, the Board may regulate its own procedure in such manner as it thinks fit.

(9) No act or proceeding of the Board shall be invalidated merely by reason of the existence of a vacancy among the directors.

10. Allowances for directors – (1) A director shall be paid such allowances as may be fixed by Cabinet.

(2) From 31 December 2011, subsection (1) shall only apply to those directors who are not Members of Parliament nor employed in the public service.

11. Disclosure of conflicting interest – (1) A director who, otherwise than as a director, is directly or indirectly interested in any matter being considered or about to be considered by the Board, shall as soon as possible after the relevant facts have come to the director's notice, disclose the nature of his or her interest at a meeting of the Board.

(2) A disclosure under this section shall be recorded in the minutes of the meeting of the Board and the director shall not take part after the disclosure in any deliberation or decisions relating to that matter, but shall be counted as present for the purpose of forming a quorum of the Board for any such deliberation or decisions.

PART 4 MANAGEMENT AND EMPLOYEES OF THE AUTHORITY

12. Chief Executive Officer – (1) The Head of State, acting on the advice of Cabinet, shall appoint a Chief Executive Officer of the Authority.

(2) The Chief Executive Officer may be removed from office by a decision of Cabinet to that effect.

(3) Subject to the provisions of this Act, and to the general direction of the Board, the Chief Executive Officer shall control and manage the staff and operations of the Authority.

(4) The Chief Executive Officer shall be appointed for a period not exceeding 3 years, and on such other terms and conditions as may be determined by the Board and specified in the instrument of appointment.

(5) The Chief Executive Officer is eligible for re-appointment.

13. Officers and employees – (1) The Board may appoint and employ such officers and employees as the Board considers necessary for the due performance of the functions of the Authority.

(2) The officers and employees of the Authority shall be employed at such remuneration and on such terms and conditions as the Board may determine, and such terms and conditions shall:

- (a) not be less than the entitlements applying from time to time to public servants; and
- (b) take account of the need for the Authority to attract and retain appropriately qualified and experienced staff.

14. Committees of the Authority – (1) The Board may by written notice establish any advisory and regulatory committees to be part of the Authority, and when establishing such committees the Board may:

- (a) appoint the members of the committees; and
- (b) determine the roles and responsibilities for such committees; and
- (c) set times for reporting or action by such committees; and
- (d) determine any other matter for the effective discharge by a committee of its roles and responsibilities.

(2) A committee established under this section may include representatives of tourism industry associations, and such other persons as the Board considers may contribute to the performance of the functions of the Authority, and the roles and functions of its committees appointed under this section.

(3) Subject to this Act and to any directions given to it by the Board, a committee may regulate its procedure in such manner as it sees fit.

(4) A committee established under subsection (1) may only discharge regulatory functions in accordance with any law, including regulations made under this Act.

15. Delegation of powers by the Board – (1) The Board may delegate any of its powers under this Act to:

- (a) any of its committees; or
- (b) any director or directors; or
- (c) the Chief Executive Officer.

(2) Subject to any general or special directions given by the Board, any committee or person or persons to whom any powers are delegated, may exercise those powers in the same manner and with the same effect as if they have been conferred directly by this Act.

(3) No delegation under this section shall prevent the exercise by the Board of any of the powers conferred on it by this Act or by regulations made under this Act.

(4) A person purporting to act under any delegation made under this section shall, in the absence of proof to the contrary, be presumed to be acting within the terms of the delegation.

(5) A delegation pursuant to this section may be revoked by the Board at any time, but the revocation shall not affect the validity of any act or thing done under the delegated authority.

PART 5 FUNCTIONS AND POWERS OF THE AUTHORITY

16. Functions of the Authority – (1) The Authority shall be responsible for the administration, promotion and regulation of tourism industry in Samoa under this Act, and other relevant laws.

(2) Without limiting subsection (1), the functions, roles and responsibilities of the Authority include the following:

- (a) hosting or participating in any forum or meeting in relation to any purpose provided for under this Act, and ensuring that the resolutions of any forum convened to promote engagement between relevant stakeholders are actioned and addressed for the benefit of tourism in Samoa;
- (b) formulating proposals for incentive schemes to develop tourism, and performing any function and

exercising any power in relation to the approval of incentives for any tourism business in accordance with any law giving such a role to the Authority;

- (c) formulating tourism related policies and preparing and approving the tourism development plans, and advising the Minister and Government in relation to such policy and planning matters;
- (d) ensuring that consultation takes place with other government agencies in relation to the enforcement of laws affecting tourism, and developing processes and procedures whereby such laws may be more effectively implemented through streamlined processes and other appropriate means;
- (e) participation in the administration of the licensing requirements applying to providers of tourism accommodation and other tourism businesses in accordance with this Act and the Business Licences Act 1998;
- (f) ensuring that appropriate standards and systems of ratings are formulated for the tourism industry and applied through the licensing regimes, and by other appropriate means;
- (g) administering an inspectorate to monitor and report on any aspect of tourism and tourism businesses as required by this Act, and to conduct such inspections and investigations as are necessary for the effective implementation of this Act;
- (h) maintaining records, statistics and accounts in relation to its functions under this Act;
- (i) implementing marketing strategies and promotional activities;
- (j) undertaking research into any matter concerning tourism;
- (k) monitoring the effectiveness of the marketing and promotional activities, verifying the statistics, records and projections relating to tourism, and making recommendations to enhance the effectiveness of such programs and activities;

- (l) disseminating information relevant to tourism in Samoa;
- (m) doing all other acts and things to implement this Act effectively and the provisions of any laws under which it has functions, powers and responsibilities.

17. Powers of the Authority – (1) The Authority has all the powers and authorities necessary for the effective performance of its functions.

(2) Without limiting subsection (1), the Authority has the following powers:

- (a) to establish any committee, taskforce or entity for the purposes of implementing the provisions of this Act;
- (b) to produce or cause to be produced, and to sell or distribute magazines, pamphlets and other publications and advertising material;
- (c) to require the provision of information, records and statistics in accordance with this Act, and to distribute or supply (with or without charge) any such information, or the results of, or conclusions drawn from, the Authority's consideration of any such information;
- (d) to act as agent for any person (whether incorporated or not) or organisation, and to collect fees and commissions from such arrangements;
- (e) to classify premises offering tourist accommodation according to the standards of facilities, amenities and services provided in such premises;
- (f) to establish, maintain, provide and operate buildings, services, attractions, amenities and facilities for tourists and the public;
- (g) to co-operate with any person or persons, (whether incorporated or not and whether in Samoa or elsewhere) or any government Ministry or agency that may be engaged, concerned or interested in the promotion of tourist traffic for Samoa, and to contribute to the expenses involved in such co-operation;

- (h) to otherwise undertake or assist in any product development within the tourism industry, and any necessary capacity building program or activity;
 - (i) to do anything incidental to the exercise of the foregoing powers.
- (3) For the purposes of performing the functions of the Authority more effectively, the Board may give approval for the Authority to:
- (a) enter any partnership arrangement by way of joint venture, agency or otherwise; and
 - (b) establish and empower any subsidiary or separate operational unit of the Authority.
- (4) The Minister may give directions to the Authority with respect to matters of policy approved by Cabinet, including directions with respect to the general nature and extent of the operations of the Authority, and the Board shall comply with any such direction.

18. Reservation of Names and Use of Brands – (1) The Authority may continue to use the name “Samoa Tourism” or “Tourism Samoa”, and when used by the Authority those titles shall refer to and mean the Authority for all purposes.

(2) The names, titles and brands in Schedule 1 are reserved for the use of the Authority for the purposes of promoting tourism in Samoa, or any other appropriate purpose that the Board determines.

(3) The Reserved Names, title and brands in Schedule 1 may be added to or removed by regulations made under this Act.

(4) The reservation of the names, titles and brands to the Authority under this section shall apply despite the provision of any other law, and no right to use the names, titles and brands may be given to any person in accordance with any other law.

(5) The Authority may permit the use of the names, titles and brands in Schedule 1, by licence, accreditation or otherwise as the Board determines.

(6) A person who:

- (a) uses or displays any name, title or brand reserved under subsection (2) without the lawful authority of the Authority; or
- (b) refuses or fails to stop using or displaying any name, title or brand reserved under subsection (2) when

required to do so by written notice to that effect given by the Chief Executive Officer; or

- (c) refuses or fails to remove the display of any name, title or brand reserved under subsection (2) from any premises, vehicle, signboard or any other place, when required to do so by written notice to that effect given by the Chief Executive Officer,

—

commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

19. Role of Industry Associations – (1) The Authority may recognise associations formed for the representation of tourism interests, and shall facilitate their involvement in the management of tourism by:

- (a) permitting their representation on committees, and at other Forums; and
- (b) coordinating responses from government to issues raised by them concerning any aspect of the promotion and management of tourism; and
- (c) any other means which provides opportunities for their effective involvement and participation in the promotion and management of tourism.

(2) For the purposes of this section, the Samoa Hotels Association Inc., shall be recognised as an industry association, and such recognition may be accorded to other associations formed for similar purposes.

(3) The Authority may prepare and approve guidelines stating criteria upon which the recognition of industry associations is to be determined under this section.

PART 6 FINANCES OF THE AUTHORITY

20. Gifts to the Authority – The Authority may accept any donations, gifts or assistance of any kind from any person, company or government agency.

21. Funds of the Authority – The funds of the Authority include all monies:

- (a) appropriated by Parliament for the purposes of the Authority; and
- (b) donated or given to the Authority or that may be otherwise lawfully payable to the Authority; and
- (c) received by the Authority by way of fees for certification, accreditation, the provision of services or otherwise arising from the performance of any of the functions and powers of the Authority; and
- (d) raised by any means in accordance with regulations made under this Act.

22. Management of Funds by the Authority – (1) The monies of the Authority shall be held in such accounts or funds as the Board may determine.

(2) The Board may approve the establishment of special funds and the management of monies in these special funds dedicated for purposes associated with:

- (a) the marketing or promotional activities undertaken by or on behalf of the Authority; and
- (b) any aspect of the administration or operation of the Authority; and
- (c) any joint venture, agency or other relationship between the Authority and a partner of the Authority.

23. Accounts, audit, and annual report– (1) The Authority shall:

- (a) keep full and proper accounts of its financial affairs and other records of its operations; and
- (b) prepare financial statements and other statements of accounts in accordance with international best accounting practice, and which are necessary to show the financial position of the Authority and the financial results of its operations during that year fully and accurately.

(2) The accounts of the Authority shall be audited each year by the Auditor under this section and the requirements of other applicable laws.

(3) As soon as reasonably practicable after the end of each financial year, the Board shall send to the Minister:

- (a) a report of its proceedings and the operations of the Authority for that year, together with a copy of its audited accounts for that year; and
- (b) the report of the Auditor in relation to its accounts.

(4) A copy of the report and the audited accounts of the Authority, together with a copy of the Auditor's report on the accounts, shall be laid before the Legislative Assembly by the Minister as soon as practicable after the Minister has received them.

(5) The Chief Executive Officer and the chief financial officer of the Authority shall sign off on all accounts and reports kept or prepared under this section, and shall certify that:

- (a) proper books of account have been maintained by the Authority;
- (b) the accounts and reports accurately reflect the financial affairs of the Authority, and the accounts maintained by the Authority; and
- (c) adequate procedures of internal control have been applied by the management of the Authority.

24. Audit of Accounts – (1) Within 3 months after the end of each approved financial year, the Authority shall cause to be prepared full and true statements and accounts of all its income and expenditure in that year and of its assets and liabilities at the end of that year.

(2) The accounts of the Authority shall be audited by the Auditor, or by any other auditor authorised by the Auditor for the purpose.

25. Powers of the Auditor – (1) The Auditor, and any person authorised to act by the Auditor, is entitled at all reasonable times:

- (a) to have full and free access to all accounts, papers, records and other documents relating to the activities of the Authority;
- (b) to take copies of such materials, or to require copies to be provided; and

- (c) to require and receive any information or materials from any person, for the purpose of carrying out duties in accordance with this Part.

(2) Any person who hinders or obstructs the Auditor, or an authorised person under subsection (1) in the carrying out of duties under this Act, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 3 months, or both.

26. Director's responsibilities in relation to accounts and reports – All directors must sign off on the accounts of the Authority and the report prepared by or on behalf of the Authority under section 23.

27. Other fiduciary obligations of directors – (1) The following provisions of the Companies Act 2001 apply to the Authority and its directors:

- (a) the fundamental duties of directors under section 65 of the Companies Act 2001;
- (b) the use and disclosure of information by directors as provided for in section 69 of the Companies Act 2001;
- (c) the standard of care applying to director's duties under section 70 of the Companies Act 2001;
- (d) indemnities and insurance for directors as provided for in sections 74 and 75 of the Companies Act 2001;
- (e) disqualifications of directors and managers as provided for in sections 77, 78 and 82 of the Companies Act 2001;
- (f) controls over the interests of directors in transactions as provided for in sections 111 and 112 of the Companies Act 2001.

(2) No obligation shall arise by reason of section 73 of the Companies Act 2001 from any direction given under section 17(4) of this Act, or any other act or decision of the Minister or the Cabinet communicated to the Authority in accordance with this Act.

PART 7 LICENSING AND REGISTRATION

OF TOURISM BUSINESSES

28. Specific licensing requirements for tourism businesses

– (1) Subject to approval by the Chief Executive Officer of the Ministry for Revenue, arrangements may be made by the Authority for the vetting by the Authority of any application for a business licence by a tourism business, and for the issue of a certificate by the Authority under subsection (2) as a requirement prior to the issue of a business licence under the Business Licences Act 1998 to a tourism business.

(2) In accordance with approved arrangements under subsection (1), the Authority may:

- (a) determine appropriate classifications for tourism businesses; and
- (b) determine the appropriate classification for any tourism business which applies for a business licence; and
- (c) issue a certificate for the business which indicates the classification determined for the business.

(3) The Authority may determine condition to be imposed in relation to any licence issued for any classification of a tourism business if such conditions may have the effect of:

- (a) maintaining any approved standard applying to the classification of business; or
- (b) preserving the reputation of Samoa as a tourist destination; or
- (c) contributing to the safety and security of tourists; or
- (d) otherwise meeting the objectives and guiding principles of this Act.

(4) The Chief Executive Officer may approve any form or other procedural requirement for giving effect to this section, and every applicant shall provide any information in support of his or her application for certification that the Chief Executive Officer may require.

(5) A person who operates a tourism business in breach of a condition applying to the licence under this section commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units, and 5 penalty units for each day that the offence continues.

29. Registration of tourism businesses – The Authority may make arrangements for the registration of tourism businesses for the purposes of:

- (a) providing advice and distributing information relating to the tourism sector in Samoa; and
- (b) promoting the business under the approved schemes of promotion and marketing undertaken by or on behalf of the Authority; and
- (c) facilitating the involvement of the business in committees of the Authority or other Forums; and
- (d) otherwise giving effect to the objectives and guiding principles of this Act.

PART 8

AUTHORISED STANDARDS, RATINGS SYSTEMS AND ACCREDITATIONS

30. Approved standards and systems of ratings and accreditations – (1) The Board may give approval to:

- (a) systems of ratings for businesses providing tourism accommodation in Samoa, and for other tourism businesses; and
- (b) documented standards applying to any type of tourism business; and
- (c) schemes of accreditation for any appropriate matter,–

and all such approved systems of ratings, documented standards and schemes of accreditation shall be published by the Authority.

(2) The Board may authorise an industry association, or any international tourism body recognised by the Board, to formulate and implement systems of ratings and documented standards applying to tourism businesses, but such ratings and standards shall not take effect until approved under subsection (1).

(3) The Board may require that any standards applied to tourism under this Part are to be consistent with:

- (a) any specific relevant standards applying to any product or activity under any applicable law in Samoa;
- (b) any standard sets by the International Organisation for Standardisation (ISO) applying to the provision of tourism services; and

(c) the Global Code of Ethics for Tourism approved by the World Tourism Organisation.

(4) No hotel or tourism business may claim to have a rating or to be of a standard without meeting the requirements of any system of ratings or documented standards approved under this section.

(5) Nothing in this section prevents wholesalers of tourism products from applying ratings of their own to tourism businesses that form part of their products and services.

31. Use of approved ratings and accreditations – (1)

Subject to subsection (3), any tourism business which meets the required standards approved under section 30 to apply to any scheme of ratings may promote its business by reference to the approved rating.

(2) Subject to subsection (3), tourism businesses which meet the required standards approved under section 30 to apply to any scheme of accreditation may promote its business by reference to the approved accreditation.

(3) The Authority, or an industry association or international tourism body authorised under section 30(2), may enter into agreements with tourism businesses which have been assessed to meet required standards, to permit the use and display of approved brand or trademark to indicate the approved rating or accreditation.

32. Controls over the use of ratings and accreditations –

(1) A tourism business which makes use of an approved rating or accreditation shall permit inspections to be undertaken in accordance with section 42.

(2) The right to promote a tourism business by use of an approved rating or accreditation may be withdrawn by the Authority if it is satisfied that the tourism business no longer meets the applicable standards or requirements.

(3) A tourism business which:

(a) claims to have a rating or accreditation which it has not been approved to use in accordance with this Part, or if the right to use it has been withdrawn by the Authority; or

- (b) fails to comply with the terms of an agreement permitting the use of a rating or accreditation entered into under section 31(3); or
 - (c) fails or refuses to permit inspections to be undertaken as required by subsection (1), –
- commits an offence and is liable upon conviction to a fine not exceeding 20 penalty units, and 10 penalty units for each day that the offence continues.

PART 9 OTHER TOURISM RELATED ISSUES

33. Research, statistics and information – (1) All operators and managers of tourism businesses shall:

- (a) keep all records and data related to the tourism business which the Authority requires to be recorded and kept; and
- (b) provide all information, statistics and copies of records related to the tourism business that are required to be provided by the Authority; and
- (c) file any returns related to the tourism business required by the Authority giving accurate information concerning any matter required to be provided in the returns, other than information concerning taxation or other commercially sensitive matter.

(2) The Authority may use the information and data provided to it in accordance with this section for the purposes of preparing statistics and for related purposes, but shall ensure that the specific or identifying information provided from tourism businesses is otherwise kept confidential.

(3) A person who:

- (a) fails or refuses to comply with subsection (1); or
- (b) divulges or makes use of any information of any kind provided under this section in a manner not authorised by subsection (2), –

commits an offence and is liable on conviction to fine not exceeding 10 penalty units.

34. Tourism Development Plans – (1) The Authority shall prepare, or cause to be prepared, a tourism development plan for

Samoa for successive periods of 5 years, or such other period as the Minister may determine.

(2) The tourism development plans prepared under subsection (1) shall identify and address the following matters:

- (a) current economic and social trends;
- (b) core markets and market outlooks;
- (c) destination promotion and marketing strategies;
- (d) product and service development strategies;
- (e) institutional development and reform needs, and opportunities for industry partnerships;
- (f) any other matter or issue that the Board determines.

(3) A plan prepared under this section shall have effect upon approval by the Board.

35. Arrangements for district planning etc. – The Board may implement arrangements for the development of tourism in designated tourism development districts of Samoa determined by the Authority, by:

- (a) facilitating and recognising the formation of industry associations at district level; and
- (b) arranging for aspects of the tourism development plan to apply to specific districts of Samoa; and
- (c) undertaking programs and activities in certain districts; and
- (d) any other program or initiative that the Board approves.

36. Access to tourism sites and access fees – (1) The Authority may prepare a policy dealing with the following:

- (a) matters related to access to beaches, rivers and streams and other sites of tourism interest;
- (b) the fees that may be properly charged for such rights of access;
- (c) the persons who may impose and collect the fees;
- (d) the uses to which such fees should be applied;
- (e) any other matter which shall facilitate the appropriate imposition and collection of such fees.

(2) A policy prepared under subsection (1) shall take effect upon its approval by Cabinet, and shall be applied and enforced in accordance with the Internal Affairs Act 1995.

(3) Payments due under the Internal Affairs Act 1995 to any person, village or village officer may be withheld if the Authority reports that the policy approved under this section is not being observed by that person, the relevant village council or any person in a village area where a site of tourism interest is located.

(4) The Head of State, acting on the advice of Cabinet, may make regulations in relation to sites of tourism interest, and rights of access to them.

37. Failing to develop or improve declared tourist locations – (1) A levy to be known as a “Stalled Tourism Development Levy” may be imposed in relation to any prescribed tourism development site on government land leased for the purpose of tourism development, and such levy shall be applied in accordance with regulations made by the Head of State acting on the advice of Cabinet.

(2) For the purposes of this section “government land” includes:

- (a) all public lands as defined in the Constitution; and
- (b) all lands held or owned by any statutory corporation;
and
- (c) the landholdings of the Samoa Land Corporation.

(3) The levy imposed under subsection (1) shall become payable upon the expiration of 2 years from the date determined to be the completion date of the proposed development.

(4) The levy imposed under this section shall be fixed at an annual amount of 20% of the estimated or proposed development cost of the site.

(5) This section does not apply if the relevant lease is surrendered before the first payment of the levy falls due.

(6) Regulations made under subsection (1) may make provision for:

- (a) designating certain sites on government land to be prescribed tourism development sites for the purposes of imposing the stalled tourism development levy;
- (b) determining the amount of the estimated or proposed development cost for any site;
- (c) determining the designated completion date from which the levy is to become due and payable;

- (d) the collection of the stalled tourism development levy;
- (e) penalties by way of interest or otherwise for the non-payment of the levy;
- (f) grounds for granting deferral of the levy; and
- (g) any other matter relevant to the administration of the stalled tourism development levy.

38. Preservation of the reputation of the destination – (1)

The Authority may take such action as is necessary to preserve the reputation of Samoa as a tourism destination by:

- (a) exercising lawful controls over the publication of false or out of date information by any means, or such information which is prejudicial to a public perception of Samoa;
- (b) otherwise publishing information to correct any fact, matter or detail which the Authority considers to be false or misleading; or
- (c) doing any other act or thing which may preserve the reputation of Samoa as a tourism destination when necessary.

(2) No civil or criminal liability shall apply to the Authority in relation to any exercise of a power under this section.

(3) A person who:

- (a) publishes or causes to be published, by any means, any information or claim that is false and which is intended or may have the tendency to cause harm to the reputation of Samoa as a tourism destination; or
- (b) refuses to retract such false information or to publish a correction concerning the information when required to do so by the Authority; or
- (c) fails to retract the information or to publish a correction in the manner required by the Authority, –

commits an offence and is liable upon conviction to a fine not less than 50 penalty units, or to imprisonment for a term not exceeding 3 months, or both.

39. Installation of tourism signage – (1) The Authority may assess the need for signage to be placed for the assistance of

tourists and the identification of sites of tourism interest, and may:

- (a) approve the nature, design and details of such signage; and
- (b) identify the locations at which such signage is to be located; and
- (c) liaise with government ministries and agencies having responsibilities relating to road reserves and road signage to ensure that appropriate signage is provided as determined.

(2) A person who removes, destroys, defaces or otherwise interferes with any signage installed for the purposes of this section commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 3 months, or both.

PART 10 INSURANCE COVER AND ISSUES OF LIABILITY

40. Requirements to have insurance cover – (1) The Head of State, acting on the advice of Cabinet, may make regulations which impose requirements on any tourism business to:

- (a) hold insurance cover of a specific nature or amount of cover; or
- (b) disclose by any prescribed means that no insurance cover is held by a tourism business in relation to any specific matter.

(2) If a tourism business fails to maintain a current and valid policy of insurance, or fails to make disclosure, when required to do so under regulations made under subsection (1), the Authority may:

- (a) object to the grant or renewal of the business licence applying to the business, and in such an event the licence shall not be granted or renewed;
- (b) withdraw any rating or accreditation applying to the business; and
- (c) remove the registration of the business under section 29.

41. Liability of persons for acts of their agents and employees – (1) When determining the liability of a person (whether incorporated or not) for any breach of this Act, or any other law applying to the tourism business of the person, the person is liable for the acts of employees and agents done at the direction of the person or in accordance with the duties of the employee or agent.

(2) A person who appears to be employed in a tourism business which is licensed under this Act is taken to be an agent or employee of the owner of the business.

(3) Nothing in this section relieves an employee or agent of liability for any act which he or she would otherwise be personally liable.

PART 11 MISCELLANEOUS

42. Powers of inspection etc., – (1) The powers provided under subsection (2) may be exercised by any officer of the Authority authorised by the Chief Executive Officer.

(2) For the purposes of implementing and enforcing the provisions of this Act, and monitoring the standards of accommodation and services provided by tourism businesses, persons authorised under subsection (1) may:

- (a) make requests to owners and operators of hotels and other accommodation providers to enter upon their land and premises; and
- (b) require access to or copies of records and information that tourism businesses are required to maintain and provide; and
- (c) otherwise conduct inspections under this Act and assessments having due regard to the privacy of guests and the operational requirements of the businesses.

43. Powers to prosecute – (1) The Authority may undertake or authorise the undertaking of any prosecution for a breach of this Act.

(2) When determining any legal proceedings for a breach of this Act, a court may authorise the payment to the Authority of any penalty imposed in accordance with this Act, and shall order

the defendant to pay to the Authority all the costs of the prosecution.

44. Indemnities for directors and employees – No director, officer of the Authority, inspector or person appointed to a committee of the Authority shall be personally liable for any act done or omitted to be done in good faith in the performance of the functions of the Authority or of any committee of the Authority, or the exercise of any lawful power in relation to such functions.

45. Savings and transitional provisions – (1) The General Manager of the Authority holding office at the time of commencement of this Act continues to hold office as Chief Executive Officer as if appointed under this Act.

(2) All other officers and employees of the Authority holding office at the time of commencement of this Act shall continue to hold the equivalent office in the Authority.

(3) All rights, entitlements, obligations and liabilities applying to the former Samoa Visitors Bureau as at the commencement of the Samoa Tourism Authority Act 2002, shall continue to apply to the Authority.

(4) All contracts and legal proceedings to which the former Samoa Visitors Bureau was a party as at the commencement of the Samoa Tourism Authority Act 2002 shall continue to have valid effect as if made or taken by the Authority.

(5) All monies owed to the former Samoa Visitor Bureau and unpaid immediately before the commencement of this Act remain payable to the Authority and may be recovered by the Authority.

46. Forms and fees – The Chief Executive Officer may approve forms to be used for any purpose under this Act.

47. Regulations – (1) The Head of State, acting on the advice of Cabinet, may make regulations that are necessary or expedient for giving full effect to this Act, and for its due administration.

(2) Without limiting subsection (1), regulations made under this section may prescribe the following:

- (a) definitions of tourism businesses, or any services provided by tourism businesses;

- (b) conditions applicable to all licences, or to all types or classes of licence or accreditations issued or granted in accordance with this Act;
 - (ba) fees for the purposes of this Act (other than the fees under section 36);
 - (c) powers of inspection and enforcement, and requirements for any inspection to be undertaken for a purpose associated with the application of this Act;
 - (d) matters to give effect to any code of ethics adopted by the World Tourism Organisation;
 - (e) requirements applying to providers of in-bound tour services to respect local customs and traditional authority structures, and to make appropriate use of Samoan citizens in the provision of services involving or impacting on such customs and traditions;
 - (f) matters related to the establishment, roles and powers of other units and agencies of the Authority in accordance with the section 17(3), and the appointment of personnel and the roles and powers to be performed by them to meet the objectives of this Act;
 - (g) matters relevant to the classification of licences for tourism businesses;
 - (h) matters relating to the registration of tourism businesses under section 29;
 - (i) additional powers of inspectors appointed under section 42;
 - (j) matters related to the formulation, approval, recognition and application of standards and systems of ratings under Part 8.
- (3) The amount of a fee prescribed under subsection (1):
- (a) shall be proposed by the Authority with the concurrence of the Board; and
 - (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

48. Repeal of the Samoa Tourism Authority Act 1984 –
The Samoa Tourism Authority Act 1984 is repealed.

SCHEDULE 1*Section 18***RESERVED NAMES AND BRANDS**

1. Tourism Samoa
2. Samoa Tourism
3. Samoa - The Treasured Islands of the South Pacific
4. Samoa - The Treasure Islands of the South Pacific
5. Treasure Islands
6. Treasure Island
7. www.samoa.travel
8. Samoa.travel
9. Beauty so pure
10. What's up? Samoa Tourism Industry Update
11. Fai fai easy in Samoa
12. Take it easy in Samoa
13. Visit Samoa
14. Miss Samoa
15. Tausala Samoa
16. Miss Teuila
17. Teuila Festival
18. Samoa Holiday
19. Holiday Samoa
20. Samoa Experience
21. Experience Samoa
22. Visitor Information Centre
23. Visitor Information
24. Tourist Information Centre
25. Tourist Information
26. Samoa Information Centre
27. Samoa Information
28. Apia Information Centre
29. Information Centre

REVISION NOTES 2012 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division in 2012 to 2020/3 March 2021 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) Insertion of the commencement date
- (b) Other minor editing where appropriate:
 - (i) Placing “and” or “or” from the end of each paragraph
 - (ii) “Every” and “any” changed to “a/an”
 - (iii) Present tense drafting style:
 - o “shall be” changed to “is/are” or “is/are to be”
 - o “shall have” changed to “has”
 - (iv) Use of plain language
 - o “in accordance with” changed to “under”
 - o “deemed” changed to “taken”
 - (v) Numbers in words changed to figures and removal of duplicate number in word
 - (vi) Removal of superfluous words
“the generality of”.
- (c) Parts in Roman numerals changed to decimal numbers.

The following amendments have been made to this Act since its enactment:

By the *Fees and Charges (Miscellaneous Amendments) Act 2017 No. 13*:

Amendments were made by this Act to sections 46 and 47 to reflect that fees charged under the Act are to be prescribed by Regulations.

By the *Miscellaneous (Board of Public Bodies) Amendment Act 2020, No 6*, (commenced 28 January 2020):

Section 6 subsection (1) substituted and subsection (2) repealed.

By the *Miscellaneous (Salary Conditions Upon Suspension) Amendment Act 2021 No. 6 (commenced on 3 March 2021)*:

Section 12 inserted new subsections (2A) – (2C).

Section 13 inserted new subsections (3) – (4A).

*This Act is administered by
the Samoa Tourism Authority.*