

SAMOA INSTITUTE OF ACCOUNTANTS ACT 2006

SAMOA

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2006, No. 7

AN ACT to:

- (a) continue the Western Samoa Society of Accountants under the name "Samoa Institute of Accountants"; and
- (b) require the Institute to have rules governing membership, discipline, and other matters and a code of ethics governing the professional conduct of its members; and
- (c) prohibit the use of terms implying membership of the Institute by persons who are not members; and
- (d) provide for related matters; and
- (e) repeal the Public Accountants Act 1984.

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 Samoa Institute of Accountants Act 2006.

(2) This Act shall commence on the date of assent of the Head of State.

(3) Notice of commencement of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

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

- “Accountant” includes an auditor and a bookkeeper;
- “Accounting services” means all services relating to the compiling and/or the preparation of accounts in any manner or form and includes auditing and booking services;
- “Appeals Council” means the Appeals Council referred to in section 7(1)(h) of this Act;
- “Certificate of public practice” means a certificate of public practice issued in accordance with the rules but excludes any “Temporary Certificate of Public Practice” that may be issued by the Council under the rules;
- “Code” means the code of ethics of the Institute referred to in section 8 of this Act;
- “Council” means the Council of the Institute referred to in section 7(1)(a) of this Act;
- “Disciplinary body” or “body” means the Disciplinary Tribunal or the Appeals Council;
- “Disciplinary Tribunal” means the Disciplinary Tribunal referred to in section 7(1)(g) of this Act;
- “Government” means the Government of the Independent State of Samoa;
- “Institute” means the Samoa Institute of Accountants constituted under this Act;
- “Member” means a person who, under the rules of the Institute, is a Public Accountant or Accountant Technician of the Institute;
- “Professional Conduct Committee” means the Professional Conduct Committee referred to in section 7(1)(f) of this Act;
- “Public accountant” means a member of the Institute who, under the rules of the Institute, is entitled to use the designation “public accountant”;
- “Registrar” means the Registrar of Companies in Apia;
- “Registration” means registration by the Registrar on a public file;
- “Rules” means the rules of the Institute established under section 7 of this Act;

“Society” means the Western Samoa Society of Accountants constituted under the Public Accountants Act 1984.

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

PART II

SAMOA INSTITUTE OF ACCOUNTANTS

4. Continuation of Society as Institute-(1) The body corporate existing under the name of the Western Samoa Society of Accountants immediately before the day on which this Act comes into force shall continue on and after that day under the name of “Samoa Institute of Accountants”.

(2) The Institute shall –

- (a) have perpetual succession and a common seal;
- (b) be capable of suing and being sued in its corporate name;
- (c) be capable of entering into contracts, acquire, hold and dispose of real and personal property and be capable of doing all such other acts and things as bodies corporate may lawfully do;
- (d) be capable of exercising all such authorities and powers as shall be necessary or expedient for the due administration of this Act.

(3) The Institute shall have members in accordance with the rules and this Act but membership does not of itself -

- (a) impose on the members any liability in respect of any contract, debt, or other obligation made or incurred by the Institute; or
- (b) confer on the members any right, title, or interest in the property of the Institute.

5. Functions of Institute – The functions of the Institute are:

- (a) to promote quality, expertise, and integrity in the profession of accountancy by its members in Samoa;

- (b) to promote, control, and regulate the profession of accountancy by its members in Samoa;
- (c) to promote the training, education, and examination of persons practising, or intending to practise, the profession of accountancy in Samoa or elsewhere;
- (d) to protect the interests of the Institute and the accountancy profession;
- (e) to discourage illegal, dishonourable, unprofessional and improper conduct by accountants;
- (f) to grant or issue certification of membership to members and to other persons in recognition of their proficiency in accounting or in any matter relating to the duties of an accountant;
- (g) to grant prizes or scholarships, to hold exhibitions, and to grant pecuniary or other assistance to student of accounting; and
- (h) any other functions that are conferred on it by the rules.

6. Powers of Institute-(1) The Institute shall have all the powers that are reasonably necessary or expedient to enable it to carry out its functions provided by this Act or any applicable law.

(2) Without limiting the generality of subsection (1) of this section the Institute may do any of the following:

- (a) subject to this Act, impose or levy fees or other charges to be paid by its members in respect of matters arising under or provided for or authorised by this Act;
- (b) grant or issue certification to members and other persons with proven proficiency in accountancy;
- (c) grant or issue awards and scholarships to members and other persons with proven outstanding performance relating to accountancy;
- (d) grant pecuniary or other assistance to students of accounting; and
- (e) exercise any other powers that are conferred on it by this Act or any other law.

7. Rules of Institute-(1) The Institute must have rules that provide for-

- (a) a Council of the Institute and the powers of the Council; and
- (b) the admission of members of the Institute and the cessation of membership; and
- (c) the summoning and holding of general meetings of the Institute, and the method of voting at those meetings; and
- (d) a President and one or more Vice-Presidents of the Institute; and
- (e) an Executive Board of the Institute; and
- (f) a Professional Conduct Committee to investigate complaints against members and former members of the Institute and the powers and procedure of that Committee; and
- (g) a Disciplinary Tribunal to hear complaints and matters referred to it by the Professional Conduct Committee and the powers and procedure of that Tribunal; and
- (h) an Appeals Council to hear appeals from decisions of the Disciplinary Tribunal and the powers and procedure of that Council; and
- (i) the kinds of conduct, including criminal offences, professional misconduct, and financial misconduct, for which a member or former member may be disciplined; and
- (j) the actions that may be taken in respect of, and the penalties that may be imposed on, a member or former member by the Professional Conduct Committee or a disciplinary body for such conduct; and
- (k) the use and control of the common seal of the Institute; and
- (l) the issue and control of temporary practicing certificates to non-members; and
- (m) the amendment and replacement of the rules.

(2) In addition to the provisions required by subsection (1) of this section, the rules may contain any other provisions that

are not inconsistent with this Act or any other Act or any rule of law.

(3) The Council must, no later than 90 days after the day on which this Act comes into force, deliver to the Registrar for registration a document described as, and which shall constitute, the rules of the Institute.

(4) The Council must, no later than 90 days after the passing of any amendment to the rules or replacing the rules, deliver to the Registrar for registration a copy of the amendment or the new rules.

8. Code of ethics-(1) The Institute must have a code of ethics that governs the professional conduct of its members.

(2) The code of ethics must be prescribed by the Council.

(3) The Council must, no later than 90 days after the day on which this Act comes into force, deliver a copy of the code to the Registrar for registration.

(4) The Council may at any time amend or revoke the code.

(5) Revocation of the code shall become effective upon the date of registration of the replacement code delivered by the Council to the Registrar.

(6) The Council must, no later than 90 days after passing any amendment to the code or replacing the code, deliver to the Registrar for registration a copy of the amendment or the new code.

PART III

MATTERS RELATING TO DISCIPLINING OF MEMBERS

9. Professional Conduct Committee and disciplinary bodies to observe rules of natural justice-(1) In the exercise of their functions and powers, the Professional Conduct Committee and each disciplinary body shall observe the rules of natural justice.

(2) Where any matter relating to the investigation, hearing and determination of any charge laid against a member is not provided for under this Act, the provisions of the Commissions of Inquiry Act 1964 shall apply.

10. Evidence at hearings of disciplinary bodies - A disciplinary body may-

- (a) receive evidence on oath (and for that purpose an officer or employee of the Institute, or a member of the disciplinary body, may administer an oath); and
- (b) permit a person appearing as a witness before it to give evidence by tendering a written statement and verifying that statement by oath.

11. Disciplinary bodies may summon witnesses-(1) A District Court Judge may, on the application of a party to proceedings before a disciplinary body, give a certificate authorising the disciplinary body to issue a summons under this section.

(2) A District Court Judge shall not give a certificate under subsection (1) of this section unless satisfied that-

- (a) the evidence of the witness is or may be material to the hearing of a matter by the disciplinary body; and
- (b) it is necessary or desirable that the summons be issued to compel the attendance of the witness at the hearing.

(3) A disciplinary body shall, on production of a certificate referred to in subsection (1) of this section, issue a summons in writing, signed by a member of the disciplinary body, requiring a person specified in the summons to attend a hearing of the disciplinary body at the time and place specified in the summons and do all or any of the following at the hearing:

- (a) give evidence;
- (b) give evidence under oath; or
- (c) produce documents, things, or information or any specified documents, things, or information in the possession or control of that person that are relevant to the hearing.

(4) A disciplinary body may require that any documents or information produced under this section be verified by oath, statutory declaration, or otherwise.

- (5) A disciplinary body may –
 - (a) require that copies of any documents or information produced under this section must also be provided to any person appearing at the hearing; and
 - (b) impose any terms and conditions in respect of the provision of copies of any documents or information to a person appearing at the hearing and the use that may be made of them.
- (6) A summons may be served –
 - (a) by delivering it to the person summoned; or
 - (b) by posting it to the person summoned at that person's usual postal address.
- (7) A summons must, –
 - (a) if it is to be served under subsection (6)(a), be served at least 24 hours before the attendance of the witness is required;
 - (b) if it is to be served under subsection (6)(b), be served at least 10 days before the attendance of the witness is required.
- (8) A summons that is posted shall be treated as having been served when it would have been served in the ordinary course of post.
- (9) There shall be paid or tendered to the witness by the person requiring the attendance of the witness at the time the summons is served, or at some other reasonable time before the hearing, the sum estimated to be payable to that witness for fees, allowances, and expenses in accordance with the scales as may be determined by notice in writing by the Institute from time to time.
- (10) Any notice issued under subsection (9) must be published in the Savali and one other newspaper circulating in Samoa.

12. Protection for members of disciplinary bodies and others-

(1) No action shall lie against a member of the Professional Conduct Committee or a disciplinary body in

exercising, in good faith, any power or function under this act or the rules.

(2) Every person who-

- (a) provides documents, things, or information to the Professional Conduct Committee; or
- (b) produces documents or things to a disciplinary body; or
- (c) gives evidence or answers questions at a hearing of a disciplinary body -

has the same privileges as witnesses have in a court of law.

(3) Every counsel appearing before a disciplinary body has the same privileges and immunities as counsel in a court of law.

13. Enforcement of orders-(1) Where the Professional Conduct Committee or a disciplinary body, acting in accordance with this Act or the rules, makes an order or otherwise exercises any power in respect of any person who is or was a member of the Institute, that order or other exercise of any power has effect whether or not that person remains a member of the Institute.

(2) Where the Professional Conduct Committee or a disciplinary body, acting in accordance with this Act or the rules, orders any person who is or was a member of the Institute to pay a penalty, expenses, or other monetary amount to the Institute, that amount is recoverable by the Institute from that person as a debt due to the Institute, whether or not that person remains a member of the Institute.

PART IV OFFENCES

14. Improper use of terms implying membership of Institute-(1) Every person commits an offence who, -

- (a) not being a member of the Institute, uses in connection with the person's business, employment, or profession any written words, initials, or abbreviations of words intended to cause or which may reasonably cause any other person to believe that the person is a member of the Institute; or

- (b) not being entitled to do so under the rules, describes the person in writing as a public accountant or a public accountant in public practice or a fellow public accountant or an accounting technician; or
 - (c) not being a member of the Institute, describes the person in writing as a registered accountant, unless it is proved that the manner and circumstances in which the description was given were such as to raise no reasonable inference that it was referring to membership of the Institute; or
 - (d) not being entitled to do so under the rules, uses in connection with the person's name, or with the name under which the person carries on business, the initials "PA", "PA(P)", "FPA", "FPA (P)" or "AT" or an abbreviation of the words "public accountant", "public accountant (public practice)", "fellow public accountant", "fellow public accountant (public practice)", or "accounting technician", or any combination of any such initials or abbreviations, unless it is proved that the manner and circumstances in which the initials or abbreviations were used were such as to raise no reasonable inference that they were referring to membership of the Institute.
- (2) Every person who commits an offence against subsection (1) of this section is liable on summary conviction to a fine not exceeding 100 penalty units, and if the offence of which a person is convicted is continued after the conviction, the person commits a further offence and is liable to a fine not exceeding 1 penalty unit for every day on which the offence is continued.

15. Accountants and auditors must be qualified-(1)

Subject to subsection (3) of this section, it shall be an offence to describe or hold out publicly that a person is a public accountant or auditor unless that person is suitably qualified in accordance

with subsection (2) of this section to offer accounting or auditing services to the public.

(2) For the purpose of this section, a person is suitably qualified to provide accounting services to the public if that person holds a certificate of public practice or a temporary certificate of public practice issued by the Council of the Institute under its rules.

(3) Nothing in this section prevents -

- (a) any person who is not offering services to the public as an accountant or auditor or under any similar designation from the use of such a designation in respect of or in relation to the person's salaried employment or occupation;
- (b) any person from practising publicly and describing the person as a secretary or cost consultant, or under any other designation not associated with or conveying the impression that the person is an accountant or auditor; or
- (c) the Controller and Chief Auditor from appointing, or authorising or approving the appointment of any person as an audit inspector in respect of any public undertaking.

(4) Every person who commits an offence against this section is liable on summary conviction to a fine not exceeding 100 penalty units; and if the offence of which a person is convicted is continued after the conviction, the person commits a further offence and is liable to a fine not exceeding 1 penalty unit for every day on which the offence is continued.

16. Failure to comply with summons of disciplinary body-(1) Every person summoned under section 11 of this Act to attend a hearing of a disciplinary body commits an offence if such person summoned, without sufficient cause, does any or all of the following:

- (a) fails to attend in accordance with the summons;
- (b) does not give evidence when required to do so;
- (c) does not give evidence under oath when required to do so;

- (d) does not answer any question that is lawfully asked by the disciplinary body; or
- (e) does not, provide any documents, things, or information the summons requires that person to provide.

(2) A person summoned to attend a hearing of a disciplinary body shall not be convicted of an offence against subsection (1) of this section unless witnesses expenses are paid or tendered to that person in accordance with section 11(9) of this Act.

(3) Every person who commits an offence against this section is liable on summary conviction to a fine not exceeding 10 penalty units.

PART V

APPOINTMENT OF AGENT TO CONDUCT PRACTICE OF SOLE PRACTITIONER

17. Agent may be appointed to conduct sole practitioner's practice - Notwithstanding any other enactment or rule of law, an agent may be appointed, in accordance with the provisions of the Schedule to this Act, to conduct the practice of a public accountant in public practice who is a sole practitioner.

PART VI

MISCELLANEOUS PROVISIONS

18. References to Society - Every reference to the Society in any enactment or document shall unless the context otherwise requires, be read as a reference to the Institute.

19. References to public accountants – Every reference in any enactment to a -

- (a) public accountant; or
- (b) public accountant in public practice; or
- (c) public accountant who holds a certificate of public practice,

5. Term of appointment-(1) The appointment of any agent by a sole practitioner must be for one or more of the following periods:

- (a) any period during which the sole practitioner is incapacitated and unable to conduct his or her practice;
- (b) any period during which the sole practitioner is absent from Samoa;
- (c) a period from the death of the sole practitioner until the earlier of the following:
 - (i) an administrator of the estate of the sole practitioner revokes the appointment;
 - (ii) one year after the grant of administration in the estate of the sole practitioner.

(2) The appointment of an agent by an administrator of the estate of a sole practitioner shall continue until the administrator revokes the appointment.

6. Cessation of agent's powers-(1) The powers of an agent cease on the earlier of the following:

- (a) the revocation of the appointment;
- (b) the expiry of the term of the appointment; or
- (c) the sole practitioner, in respect of whose practice the powers have been given, commencing practice with any other public accountant or public accountants.

(2) The powers of an agent do not cease by reason only of the sole practitioner, in respect of whose practice the agent has been appointed, dying or becoming mentally disordered.

7. Suspension of powers of agent-(1) The manager or an administrator of the practice of a sole practitioner may, at any time, suspend the powers of an agent to conduct the practice of the sole practitioner.

(2) A manager or administrator may revoke any suspension under subclause (1).

(3) A manager or administrator shall, as soon as practicable, give the agent notice in writing of the suspension or revocation.

8. Obligations of agents-(1) An agent must not act until -

- (a) the agent has given a certified copy of the power of attorney to the Institute; and
- (b) the Council, or a committee of the Council authorised by the Council for this purpose, has resolved to permit the agent to act under that power of attorney.

(2) If an agent ceases to act as such, the agent and the agent's appointor (if living) must, as soon as practicable, give the Institute notice in writing of the agent ceasing to act.

(3) Notice to the Institute under this clause may be given to an officer or employee of the Institute authorised by the Institute to accept notice for this purpose.

9. Fees, etc-(1) Every agent acting under a power of attorney given under this Act must pay all fees payable in accordance with the rules of the Institute, all contributions and levies to the fidelity fund, and all other amounts for which the sole practitioner would have been liable if the sole practitioner had continued to practise as a public accountant in public practice.

(2) While all such fees, contributions, levies, and amounts are being paid in respect of any sole practitioner who has died, the provisions of the Act and the rules shall apply in respect of that sole practitioner as if the sole practitioner were living and practising as a public accountant in public practice.

10. Miscellaneous provisions-(1) The provisions of this Schedule apply notwithstanding the provisions of the Property Law Act 1952 or any other enactment or rule of law.

(2) Every enactment and rule of law applies to any agent or any agency under this Schedule, except to the extent that the enactment or rule of law has been modified by this Schedule.

(3) Nothing in this Schedule prevents-

- (a) the lawful disposal of the practice of a sole practitioner; or
- (b) a public accountant granting a power of attorney otherwise than under this Schedule.