

SAMOA

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2012, No. 7

AN ACT to continue the Airport Authority established under the Airport Authority Act 1984 and to provide for the functions, powers, and duties of the Authority under modern and reformed arrangements, and for related purposes. *[26th January 2012]*

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 Airport Authority Act 2012.

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

2. Interpretation-(1) In this Act, unless the context otherwise requires:

“airport” means any area of land used or intended or designed to be used either wholly or partly for the landing, departure, movement or servicing of aircraft, and the embarkation and disembarkation of passengers or the loading and unloading of freight, and includes any buildings, installations and equipment on or adjacent to any such area used in connection with the airport or its administration, and has the same meaning as is given to “aerodrome” in any law;

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

“Authority” means the Airport Authority continued under section 3;

“aviation document” means any licence, permit, certificate, or other document issued under the Civil Aviation Act 1998;

“Board” means the Board of the Authority constituted under Part III;

“Business Unit” means any part of the Authority designated as a Business Unit for the purposes of Part VI;

“Chairperson” means the person currently holding the office of Chairperson of the Board of the Authority in accordance with section 10(2);

“Civil Aviation Act 1998” includes any regulations and rules made under the authority of that Act;

“Civil Aviation Authority” means the Civil Aviation Authority established under the Civil Aviation Act 1998;

“Convention” means the Convention on International Civil Aviation signed at Chicago on the 7th day of December 1944 and includes:

- (a) any amendment to the Convention which has entered into force under Article 94 (a) of the Convention and has been ratified by Samoa; and
- (b) any Annex or amendment thereto accepted under Article 90 of the Convention; and
- (c) the international standards and recommended practices from time to time accepted and amended by the International Civil Aviation Organisation pursuant to Article 37 of the Convention.

“Director” means any person currently holding office as a Director of the Board of the Authority under section 10;

“General Manager” means the person currently holding the office of General Manager of the Authority under section 19, and includes any person lawfully acting as General Manager from time to time under section 20;

“ICAO” means the International Civil Aviation Organisation established under the Convention and includes any successor to the Organisation;

“Minister” means the Minister responsible for civil aviation.

(2) An “aviation related service” provided by the Authority under this Act means any equipment, facility or service:

- (a) operated in support of or in conjunction with the civil aviation system as provided by the Civil Aviation Act 1998; and

- (b) which, for the avoidance of doubt -
- (i) is confined to airports operations only;
 - and
 - (ii) is not in conflict with any equipment, facility or service within the meaning of *aviation related service* under the Civil Aviation Act 1998.
- (3) Any other words and phrases used in this Act which are not defined shall have the same meaning that is given to them in the Civil Aviation Act 1998, unless the contrary intention appears.

PART II

THE AUTHORITY

3. Continuation of the Authority-(1) There shall continue to be a body corporate called the Samoa Airport Authority which shall be the same body corporate as the Airport Authority, and it shall operate and be managed in accordance with this Act.

(2) The Authority may operate under the name “Airports Samoa” or any other name approved from time to time by the Board.

(3) The management of the Authority shall be vested in its Board which shall be appointed and hold office in accordance with the provisions of Part III.

4. Authority is a body corporate-(1) The Authority is a body corporate with perpetual succession and a common seal and:

- (a) may enter into contracts;
 - (b) may sue and be sued in its corporate name;
 - (c) shall have the power to acquire, hold and dispose of real and personal property;
 - (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.
- (2) The powers of the Authority shall not be affected by any vacancy in the membership of the Board.

5. Offices of the Authority-(1) The principal office of the Authority shall be at Faleolo Airport, or such other place as the Board may determine.

(2) The Authority may establish offices at any airport under its control and elsewhere, as the Board thinks fit.

6. Functions of the Authority-(1) The Authority shall have the principal function of establishing, improving, maintaining, operating and managing airports which are under the control of the Authority, and providing services and facilities, in accordance with the Civil Aviation Act 1998 and this Act, which relate to the operation of any airport or the operation of aircraft or aviation related service.

(2) When performing its functions under this Act, the Authority shall:

(a) liaise and cooperate with the Civil Aviation Authority, the Fire and Emergency Services Authority, the Samoa Police Service, the National Disaster Council and other agencies and officers having responsibilities under the Disaster and Emergency Management Act 2007, to ensure that adequate planning and response arrangements are in place to deal with civil aviation emergencies, and to promote safety and security at airports under the control of the Authority; and

(b) cooperate with the Planning and Urban Management Agency and other relevant agencies to arrange for the application of appropriate planning requirements and restrictions in the vicinity of airports under the control of the Authority.

(3) In addition to the principal function provided for in subsection (1) the roles and responsibilities of the Authority shall, subject to approval by the Minister or the Board, include:

(a) the provision of aviation related services (including air traffic control and aviation security services) to privately operated airports in Samoa, and to airports outside of Samoa,

PROVIDED THAT any services provided to airports outside of Samoa shall be in accordance with all necessary approvals given by the Civil Aviation Authority and the State agency of the foreign country where the services are provided;

- (b) the development of the Authority's assets to optimise commercial opportunities in projects relating to civil aviation and transportation, tourism development, and in the housing and agriculture sectors;
- (c) the development and provision of facilities within airports for the application and enforcement of border control arrangements, including customs, quarantine, immigration, health, and the suppression of terrorism and organised crime;
- (d) the provision of ground handling services at airports managed by the Authority, and regulatory control over the provision of such services within its airports;
- (e) matters related to the implementation of the Convention and other civil aviation conventions and arrangements, including participation in international and regional civil aviation organisations and programs, and at relevant meetings and forums,

PROVIDED THAT any role or responsibility of the Authority under this paragraph shall be in accordance with all necessary approvals given by the Civil Aviation Authority; and

- (f) any other relevant functions which promote or develop the civil aviation industry and the provision of aviation related services in Samoa, and which are consistent with the Civil Aviation Act 1998.

7. Operating principles - In the implementation of this Act, and when providing the services and facilities that are within the operational responsibility of the Authority under this Act, the following shall be the principles that guide the Authority, and all

other Government agencies having responsibilities which impact upon the operations and administration of the Authority and the aviation industry:

- (a) safety of aircraft, passengers and workers in the civil aviation industry shall be paramount, and proper regard shall be had to the rights and needs of persons who have disabilities or special needs;
- (b) the Authority shall operate in accordance with sound commercial practice, and recognised principles of good corporate management;
- (c) obligations arising from the Convention and other international civil aviation conventions and agreements acceded to or ratified by Samoa shall be complied with;
- (d) the allocation of rights to conduct businesses within airports under the management of the Authority shall be done in a fair and transparent manner;
- (e) airports shall be operated in a manner which respects the rights and interests of customary land owners and of the general community in the vicinity of airports.

8. Authority to follow general policy of Government - In exercising its functions and powers under this Act or any other law, the Authority shall give effect to the general policy of the Government as communicated to the Authority from time to time by the Minister or Cabinet.

9. Powers of the Authority-(1) The Authority may exercise all the powers that are provided for in this Act and any other law, and shall have power to do all acts and things which are reasonably necessary or expedient to enable it to carry out its functions, roles and responsibilities.

(2) Without limiting the generality of subsection (1), the Authority may:

- (a) do anything necessary to implement any requirement under the laws of Samoa or under the Convention and other civil aviation conventions

- applicable to Samoa, which applies to airports and the provision of aviation related services;
- (b) act to protect its assets and facilities and the due provision of aviation related services, by prescribing, implementing and enforcing by-laws, operating procedures and codes of practice in accordance with section 25;
 - (c) subject to subsection (3), lease its lands and facilities on such terms and conditions as the Board determines;
 - (d) request the Planning and Urban Management Agency and other relevant agencies to prepare and apply planning requirements and restrictions in relation to areas in the vicinity of airports under the control of the Authority;
 - (e) otherwise approve the occupation and use of its premises and facilities in accordance with arrangements approved by the Board;
 - (f) impose and recover fees, charges and levies for the provision of its services in accordance with Part VIII;
 - (g) subject to applicable laws and financial instructions, borrow money from the Government or from any agency or lending institution (whether in Samoa or overseas) on such terms and conditions as the Board approves;
 - (h) enter into joint ventures, partnerships, agency relationships and any other appropriate arrangement for the performance of its functions; and
 - (i) create any Business Unit under Part VI or any other subsidiary of the Authority, and operate any special account for the purposes of paragraph (h).
- (3) The Authority may lease any of its lands for terms that are consistent with Government policy in relation to the leasing of Government lands, and on such other terms and conditions as the Board determines.

PART III
MANAGEMENT OF THE AUTHORITY

10. The Board of the Authority-(1) The Board of the Authority shall be comprised of not more than seven (7) Directors who shall be appointed by the Head of State, acting on the advice of Cabinet.

(2) Cabinet shall appoint one of the Directors to be Chairperson, and may appoint a Deputy Chairperson.

(3) No person may be appointed to be a Director, or may continue to hold office, while he or she is a person holding a full-time office in the Authority.

(4) Unless the Board decides otherwise, the General Manager shall attend all Board meetings but shall have no voting rights.

11. Terms of office of Directors - Every Director shall hold office for the term stated in the instrument of appointment or until replaced in accordance with this Act.

12. Remuneration of appointed Directors - Every Director shall be paid such remuneration and allowances as may from time to time be fixed by Cabinet.

13. Board Meetings-(1) Meetings of the Board shall be held at such times and places as the Chairperson appoints.

(2) The Chairperson shall call a special meeting whenever required to do so in writing by at least five (5) Directors.

(3) At any meeting five (5) Directors shall form a quorum.

(4) In the event that the Board cannot convene a draft resolution may be circulated to Directors, and if at least five (5) Directors indicate their consent by signing the resolution then that shall be sufficient for the acceptance by the Board of the proposed resolution.

(5) The Chairperson shall preside at every meeting at which he or she is present, and in the absence of the Chairperson, the Deputy Chairperson shall preside.

(6) If the Chairperson and Deputy Chairperson are both absent from a meeting, the Directors present shall elect one (1) of the Directors to preside at that meeting.

(7) At every meeting, the Chairperson or other person presiding shall have a deliberative vote, and in the case of an equality of votes, the Chairperson shall also have a casting vote.

(8) Every question arising at a meeting shall be decided by a majority of votes cast by the Directors.

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

14. Disclosure of interest-(1) No Director shall act as a delegate of any business interest or receive or accept directions from any business interest in respect of duties to be performed under this Act.

(2) Any Director who, otherwise than as a Director, is directly or indirectly interested in any arrangement entered into, or proposed to be entered into by the Authority, shall as soon as possible after the relevant facts have come to his or her notice, disclose the nature of such interest at the next appointed meeting of the Board.

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

(4) Where any Director acts contrary to the provisions of this Act, or uses information obtained through the Authority for personal gain (or the gain of any other person), and Cabinet is satisfied that such a breach has occurred, that member may be immediately terminated as a Director of the Authority by Cabinet on the advice of the Board.

(5) Any Director terminated under subsection (4) shall not be eligible for reappointment as a Director of the Authority at any time.

15. Contracts by the Authority-(1) Contracts on behalf of the Authority may be made:

- (a) in the form of a deed which shall be in writing and be under the common seal of the Authority; or

- (b) in the form of a written contract, which shall be in writing and be either -
 - (i) under the common seal of the Authority; or
 - (ii) signed by any person or persons acting in accordance with a general or specific direction of the Board.
- (2) The common seal of the Authority shall not be affixed to any document except in accordance with a resolution of the Board, and the execution of any document so sealed shall be attested by two (2) Directors.

16. Committees-(1) To assist the Authority to discharge its functions, the Board may from time to time appoint such advisory, audit and technical committees as it determines, and the Board may:

- (a) determine the functions of the committees; and
- (b) delegate to the committees such powers of the Board as are necessary for the committees to perform their functions.
- (2) Members of committees appointed under subsection (1) may include Directors, officers of the Authority and such other persons as the Board considers appropriate for the committees to perform their functions.
- (3) Members appointed to a committee established under subsection (1) may be paid fees, allowances and reimbursement of expenses as determined by the Board, but no such entitlement shall exceed the amount approved from time to time by Cabinet for such purposes.
- (4) Subject to other provisions of this Act and to any directions given to it by the Board, every committee may regulate its procedure in such manner as it thinks fit.

17. Delegation of powers-(1) The Board may from time to time delegate to any of its committees, or to the General Manager, or to any other officer of the Authority any of its powers under this Act, including this power of delegation.

(2) Subject to any general or special directions given by the Board, any committee or person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act, and not by delegation.

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

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

(5) Until any delegation is revoked by the Board, it shall continue in force according to its terms, even if there is any change in the membership of the Board, or of any committee of the Board.

18. No gifts etc. to be accepted by Directors or officers - No Director or any officer or employee of the Authority may accept any gift or advantage for himself or herself, or for any person with whom the member may have family, business, or financial connections if the acceptance of it would result, or give the appearance of resulting in a diminishment of his or her impartial performance of functions, duties or responsibilities under this Act.

PART IV **STAFFING PROVISIONS**

19. General Manager-(1) The Head of State, acting on the advice of Cabinet, shall from time to time appoint a General Manager of the Authority:

- (a) for three (3) years or such other period as may be specified in the appointment; and
- (b) on such other terms and conditions as are approved by Cabinet or the Board.

(2) Cabinet shall, before advising the Head of State of an appointment to be made under subsection (1), consult the Board concerning the appointment.

(3) The General Manager shall be the administrative head of the Authority, and shall be responsible to the Board for the effective and efficient management of the Authority, and for the execution of the Authority's functions.

(4) The General Manager may be suspended or removed from office by a decision of Cabinet to that effect, acting on the advice of the Board.

(5) In carrying out his or her duties, the General Manager shall follow any general or special directions given by the Board.

(6) The General Manager is eligible for re-appointment.

(7) All remuneration and other allowances and expenses payable to the General Manager shall be determined by Cabinet, and shall be paid out of the funds of the Authority.

(8) The General Manager shall not engage in any other business or occupation without the prior written consent of the Board.

(9) The General Manager may delegate any of his or her powers under this Act or any other law, or any other duty or responsibility for the management of the Authority, to any appropriate officer of the Authority.

(10) A delegation of power under subsection (9):

- (a) shall be in writing, or confirmed in writing as soon as practicable after the delegation is made;
- (b) shall not deprive the General Manager of the right to exercise any delegated power during the period of its delegation; and
- (c) may be revoked by the General Manager at any time.

20. Acting General Manager-(1) The Board may from time to time on such terms and conditions as it specifies, appoint a suitable person to be the Acting General Manager of the Authority during any temporary vacancy in the office of General Manager, or while the General Manager is for any reason unable to carry out his or her duties of the office.

(2) During any such vacancy in office or incapacity of the General Manager, the person appointed to be the Acting General Manager may exercise all the functions and powers of the General Manager, and shall perform all the duties of the office.

21. Authority staff-(1) The Authority may from time to time appoint other officers and employees of the Authority as it may consider necessary for the purposes of carrying out the Authority's functions.

(2) Officers may be engaged under contract for fixed periods or appointed to hold office on such terms and conditions approved from time to time by the Board.

(3) The Board may approve arrangements for staff entitlements and incentives for the purposes of attracting and retaining experienced officers, and such incentives may include:

- (a) bonus schemes based upon performance;
- (b) provision of health and medical insurance, and pension and retirement entitlements.

(4) All entitlements applying under this section shall be in accordance with all applicable determinations of Cabinet, and be consistent with any other legal obligation relating to the payment of pensions and contributions to retirement schemes.

(5) The engagement, employment, training, supervision and accreditation of all staff of the Authority shall be in accordance with the requirements of sections 18 and 26 of the Civil Aviation Act 1998.

PART V **AIRPORT OPERATIONS**

22. Airports under the Authority's control-(1) Unless otherwise provided for in any law, the Authority shall perform its functions and powers under this Act in relation to the airports situated at Faleolo, Maota and Asau.

(2) Cabinet may determine that any other airport in Samoa shall be managed and operated by the Authority in accordance with this Act.

23. Privately owned and managed airports-(1) Subject to subsection (2), nothing in this Act shall affect the rights of owners and operators of private airfields to operate an airfield, if they hold all necessary licences, permits, certificates or aviation documents under the Civil Aviation Act 1998.

(2) The Minister may impose conditions in relation to any aviation document applying to a privately owned or managed airport that the Authority shall provide any specified aviation related services at the private airport, and in such cases the Authority may exercise all necessary functions and powers under this Act and the Civil Aviation Act 1998 to perform those services.

(3) Fees, charges and levies for any service provided by the Authority at a private airport shall be payable to the Authority in accordance with the provisions of this Act or as determined by the Board and published in the Savali.

24. Provision of aviation services to foreign airports-(1)

The Authority:

- (a) shall provide aviation services outside of Samoa if required to do so by the Minister; and
- (b) may provide aviation services outside of Samoa in accordance with any agreement made to that effect between the Authority and any foreign airport or civil aviation authority.

(2) Services may only be provided under subsection (1) if they are consistent with the requirements of the Civil Aviation Act 1998 and the rules applying under that Act.

(3) All fees for services provided under subsection (1) shall be fixed, imposed and payable in accordance with the provisions of Part VIII.

25. By-laws, operating procedures, guidelines and codes of practice-(1) For any purpose associated with its operations at airports or the provision of aviation related services, the Authority may make and impose by-laws, operating procedures, guidelines and codes of practice relevant to any aspect of its airport management and other functions.

(2) Without limiting the generality of subsection (1), the Authority may impose by-laws prescribing:

- (a) controls over access to certain areas of its premises or lands;
- (b) measures to protect its assets and facilities;

- (c) requirements applying to car parking and the movement of vehicles within airports, and lands belonging to the Authority, including restrictions and prohibitions;
- (d) litter control and waste management measures; and
- (e) any other matter which relates to the operations of airports and aviation related services and facilities in a safe, secure and lawful manner.

(3) Subject to subsection (4), the Authority may display signs at its premises, lands and operational facilities and on their vehicles which give directions to be observed by all persons within the premises, lands and facilities, or in the vicinity of the vehicles, of the Authority.

(4) A sign displayed by the Authority under subsection (3) must comply with relevant ICAO requirements.

(5) Officers of the Authority may give directions to any person within the premises, lands and facilities of the Authority for the purpose of ensuring compliance with any by-law, operating procedure, guideline, code of practice or sign made or displayed in accordance with this section.

(6) Any person who fails or refuses to comply with any by-law, operating procedure, guideline, code of practice or sign made or displayed in accordance with this section, or with any direction given under subsection (5), commits an offence and shall be liable upon conviction to a fine not exceeding 10 penalty units.

26. Authority may remove obstructions etc.-(1) Subject to subsection (2), the General Manager may issue a notice to be affixed to any aircraft, vehicle, structure, object, matter or thing on premises, lands or facilities of the Authority requiring its removal within the period stated in the notice, and in a manner required by the General Manager.

(2) No power may be exercised under subsection (1) in relation to an aircraft that has been involved in an accident unless the exercise of the power is consistent with section 129 of the Civil Aviation Act 1998.

(3) If a notice issued and affixed under subsection (1) is not complied with in accordance with its terms, the Authority may remove the aircraft, vehicle, structure, object, matter or thing and deal with it in a manner approved by the General Manager.

(4) In any situation involving safety or security at premises, lands and facilities of the Authority, the General Manager may arrange for the removal of any aircraft, vehicle, structure, object, matter or thing so as to protect its assets and operations, and deal with it in a manner which is consistent with the rights of its owner.

27. Powers to protect assets and operations-(1) Where the General Manager is of the opinion that there is occurring, or may occur, an act or activity which involves an immediate threat or risk to the safety of aircraft or airport operations, or to a facility relevant to the functions of the Authority under this Act, the General Manager may issue a Notice under this section.

(2) A Notice issued under this section shall:

- (a) be directed to any person, organisation or body whom the General Manager believes is carrying out the act or activity, or apparently has some control over it;
- (b) specify the act or activity and the nature of its effect upon the operations of the Authority; and
- (c) require that the act or activity cease, or not be done, until the General Manager is satisfied that the threat or risk no longer exists.

(3) A Notice may be served under this section notwithstanding that any approval, licence or permit has been granted in relation to the activity.

(4) The General Manager, the Authority and the Government shall not be liable in respect of any loss or damage arising from, or in any way connected with, the issuing of a Notice under this section.

(5) Any person who:

- (a) having been served with a Notice issued under this section, fails to comply with any of its terms;

(b) having been served with a Notice issued under this section, causes or permits any other person to act in breach of its requirements; or

(c) knowingly acts in breach of the requirements of a Notice given under this section, whether or not that person has been served with the Notice,

commits an offence and shall be liable upon conviction to a fine not exceeding 100 penalty units, or to a term of imprisonment not exceeding six (6) months, or both.

(6) The powers under this section are in addition to and not in derogation of the powers of the Director of Civil Aviation under section 14 of the Civil Aviation Act 1998, and where the exercise of such powers may cause conflict the powers of the Director of Civil Aviation shall prevail.

28. Air traffic control and communications facilities-(1) By-laws and operating procedures made under section 25 may be applied to all sites and facilities at which the Authority installs and operates air traffic control or aviation communication services, including its facilities at Mt Fiamoe.

(2) Any person who:

(a) interferes with the operation of any site or facility at which the Authority operates communication services;

(b) does any act which adversely impacts upon the ability of the Authority to provide air traffic control or aviation communication services,

commits an offence and shall be liable upon conviction to a fine not exceeding 500 penalty units, or to a term of imprisonment not exceeding two (2) years, or both.

29. Transfer or closure of airports-(1) If in the opinion of the Authority, it is desirable that an airport under its control be permanently closed or transferred to another airport manager, it shall notify the Civil Aviation Authority and submit a report to the Minister.

(2) The Authority shall act in accordance with any directions given to it by Cabinet in relation to the transfer or closing of any airport.

PART VI
ARRANGEMENTS FOR RE-STRUCTURING
THE AUTHORITY

30. Formation of Business Units-(1) Subject to the approval of the Minister, the Board may determine that any section or sections of the Authority be designated as a Business Unit to which the provisions of this Part shall apply.

(2) When approving a determination under subsection (1), the Minister shall determine whether a particular Business Unit of the Authority:

(a) shall remain as an operational arm of the Authority;
or

(b) will be formed for the purpose of devolving a function or functions of the Authority to the private sector in accordance with the provisions of this Part, and any policy for privatisation approved from time to time by Cabinet.

(3) If a Business Unit established under this Part performs functions or services for which an aviation document shall be held in accordance with the Civil Aviation Act 1998, then the applicable aviation document shall be held in the name of the Business Unit.

(4) A Business Unit under this section must be certified by the Civil Aviation Authority in accordance with relevant requirements under the Civil Aviation Act 1998 prior to the Business Unit's formation.

(5) The formation and operation of any Business Unit must comply with the provisions of the Companies Act 2001, the Public Finance Management Act 2001 and the Public Bodies (Performance and Accountability) Act 2001.

31. Staff of approved Business Units of the Authority-(1) Subject to the approval of the Board, the General Manager may determine which of the staff of the Authority shall be:

(a) transferred to a Business Unit as its employee; or
(b) seconded to a Business Unit for a period determined by the General Manager.

(2) All staff of the Authority transferred to the service of a Business Unit under subsection (1) (a) shall be entitled to terms and conditions of employment no less favourable than those enjoyed by them as employees of the Authority.

(3) The General Manager shall remain responsible for the management of each approved Business Unit, and may approve the employment or appointment of staff for the Business Unit, subject to the approval of the Board.

(4) The terms and conditions for the staff appointed under subsection (3) shall be in accordance with the approval given by the Board which shall be generally consistent with entitlements paid to equivalent staff in the Authority.

32. Operations of Business Units-(1) The operations of any approved Business Unit shall:

- (a) be in accordance with any determination made by the Board or the General Manager;
- (b) comply with any requirement set by Cabinet in relation to a return to Government on its investment, or any other specified commercial objective;
- (c) comply with all laws relating to the operations of public bodies, and of businesses generally;
- (d) be aimed at promoting fair competition, and avoiding the creation of any undesirable dominance in any sector or market; and
- (e) be consistent with Government policy.

(2) Any Business Unit designated for sale under section 30(2)(b) shall be established and operated so as to ensure the maximum possible return to the Authority on its sale.

33. Sale of Business Units-(1) The disposal of any Business Unit to which section 30(2) (b) applies shall be in accordance with the provisions of the Companies Act 2001 and the Public Bodies (Performance and Accountability) Act 2001.

(2) The Minister may specify any additional requirement in relation to the sale of a Business Unit.

(3) A sale of a Business Unit may be made conditional upon certain identified staff of the Authority being employed by the purchaser for such time and upon such other conditions as may be imposed by the Minister or the Board.

(4) Any member of staff to which subsection (3) applies who claims to have been treated in a manner that is not consistent with the conditions attached to the sale of a Business Unit, will have a right of action against the purchaser of the Business Unit for breach of the condition, but shall have no right of action against the Authority or the Government.

34. Restrictions on disposal of land-(1) No land belonging to the Government or the Authority may be sold as part of the sale of any Business Unit without the approval of Cabinet.

(2) Notwithstanding any other law, a lease of land owned by the Authority or the Government may be given to any purchaser of a Business Unit as part of the sale of that Business Unit on such terms as the Minister approves, after consulting with the Minister responsible for lands.

PART VII

AIRPORT SECURITY AND SAFETY

35. Airport Security Committee-(1) The Authority, under the direction of the Civil Aviation Authority, shall assist in the establishment and operation of an Airport Security Committee established by the Minister for any purposes associated with the protection and promotion of security in relation to civil aviation, and the implementation of ICAO requirements and other international obligations relating to airports operations applying to Samoa in this regard.

(2) The Airport Security Committee shall be comprised of such persons as the General Manager determines, and shall perform such functions as are determined from time to time by the General Manager.

(3) The Committee shall meet at such times and places as are nominated by the General Manager and, subject to any requirements imposed by the Civil Aviation Authority or the National Aviation Security Committee, may regulate its own procedures as it thinks fit.

36. Airports Safety and Facilitation Committee-(1) An Airports Safety and Facilitation Committee may be established, administered and provided with administrative support by the Authority to have functions and responsibilities for:

- (a) identifying risks to safety at airports;
 - (b) complying with the requirements applying to the Authority under the Disaster and Emergency Management Act 2007;
 - (c) liaising with all agencies having responsibilities relating to safety issues and ensuring that all applicable requirements are complied with at airports managed by the Authority;
 - (d) identifying risks and hazards within airports under the control of the Authority, and arranging for the preparation and application of risk management strategies;
 - (e) identifying necessary emergency response equipment, and formulating emergency response procedures;
 - (f) identifying training and human resource needs, and implementing training programs related to safety at airports; and
 - (g) any other related matter which the Minister directs the Committee to consider and implement.
- (2) The members of the Airports Safety and Facilitation Committee shall be appointed by the Minister and shall include:
- (a) Government representatives from Ministries and agencies; and
 - (b) industry representatives representing -
 - (i) the airline industry;
 - (ii) the fuel supply industry; and
 - (iii) airport users.

(3) The Committee shall meet at such times and places as are nominated by the General Manager.

(4) The Annual Report prepared by the Airport Authority shall report on the operations and determinations of the Airports Safety and Facilitation Committee.

PART VIII **FEES, CHARGES AND LEVIES**

37. Revenue and funds of the Authority-(1) The revenue and funds of the Authority shall consist of:

- (a) any property, investments, mortgages and debentures, acquired by or vested in the Authority, and any money earned or arising from its investments;
- (b) fees paid to the Authority under this Act or any other law, including fees, charges and levies imposed on airport users by the Authority in accordance with section 38;
- (c) a general fee payable by passengers for the provision of airport facilities and aviation related services payable in accordance with this Act;
- (d) rents and other payments by tenants of airport premises and occupiers or users of other lands and facilities of the Authority;
- (e) rents and fees from advertisers and other persons permitted to make use of airport facilities and other lands and premises of the Authority;
- (f) dividends and earnings from any commercial venture undertaken by the Authority, or in which the Authority is a partner by way of joint venture or otherwise;
- (g) money borrowed by the Authority for the purpose of meeting any of its obligations or discharging any of its functions;
- (h) all money appropriated by Parliament to the Authority;
and

- (i) all other money or property which may in any manner become payable to or vested in the Authority in respect of any matter arising from the exercise of its powers and duties.
- (2) Fees and charges may be imposed for the provision of any service by the Authority, or for the use of any facility of the Authority, as approved from time to time by the Board or the General Manager, if no applicable fee or charge has been fixed under this Act or any other law.
- (3) Fees and charges are payable by all occupiers of premises within the areas under the control of the Authority, despite any provision of any law to the contrary.
- (4) The Authority may invest moneys standing to the credit of the Authority in accordance with the law applying to public bodies and public finance management in Samoa.

38. Fixing of fees, charges and levies-(1) Unless otherwise provided for by this Act or any other law, the fees, charges and levies which the Authority may impose and collect shall be fixed by regulations made under this Act.

(2) Any regulations made in accordance with subsection (1) may provide for fees, charges and levies to be varied by the Board from time to time.

(3) The General Manager may, from time to time, publish operating procedures for the purpose of defining or clarifying when any fee, charge or levy imposed under this Part becomes payable, and by whom it is payable.

(4) The absence of any approved publication under subsection (2) shall not affect the right of the Authority to impose and recover any fee, charge or levy from the person to whom the service is provided, or by whom the activity is carried out.

39. Fees, charges and levies imposed by the Authority-(1) In this section, any reference to an airport operated by the Authority includes any airport at which the Authority provides aviation related services relevant to the fee, charge or levy.

(2) The Authority may impose and collect fees, charges and levies in relation to:

- (a) landing fees and aircraft parking fees;
- (b) subject to subsection (3), any other fee related to the operation of an aircraft at, near or approaching an airport operated by the Authority;
- (c) the activation or use of runway lights, or any other facility or installation;
- (d) the provision of any other aviation related services to airports outside of Samoa;
- (e) the entry of vehicles into airport areas and for parking of vehicles, and for the rights of access to areas within airports by transport service providers;
- (f) fees payable by sellers of goods or providers of services in areas of airports where no lease or licence is applicable;
- (g) the provision of aviation security services and other aviation related services;
- (h) the supply of any fuel or other product or services within an airport operated by the Authority;
- (i) the provision of aircraft and vehicle re-fuelling services within areas under the control of the Authority;
- (j) the operation of any duty free shop or other franchise within an airport operated by the Authority;
- (k) levies relating to noise abatement or any aspect of environmental protection relating to airport operations, or to recognise the rights and interests of landowners and the general community in the vicinity of any airport; and
- (l) any other matter provided for by any law or by regulations made under this Act.

(3) The Authority may not impose fees and charges in relation to the movement of aircraft in Samoa's upper airspace, if such fees and charges are inconsistent with any law or any agreement currently in force in relation to such movements.

(4) The Authority may only impose fees in relation to the control of the upper airspace if designated as the provider of air traffic services in such airspace by the Minister in accordance with ICAO requirements.

40. General provisions in relation to fees, charges and levies-(1) In relation to any fees, charges and levies imposed under the authority of this Act, different rates may be applied to different classes of persons, airports, aircraft, aeronautical products, aviation related services, air traffic services, or aeronautical procedures, or on the basis of different times of use of such services, or on any other differential basis.

(2) Any determination of fees, charges and levies under this Act, by regulation or as otherwise provided, may:

- (a) specify the persons by whom and to whom any fees or charges are payable;
- (b) prescribe additional fees or charges or rates for work or services carried out outside normal working hours or at weekends or on statutory holidays, or to discourage any activity or operation involving the use of such works or services;
- (c) prescribe additional charges for reimbursement of travelling time, accommodation, and other expenses;
- (d) require returns to be made by persons by whom any fees or charges are payable, and prescribe conditions relating to the making of such returns;
- (e) provide for the refund or waiver of any fee or charge in whole or in part, in any specified case, or class of cases;
- (f) prescribe a date by which any such fee, charge or levy is payable, or authorise the General Manager to fix the date by which the fee, charge or levy is payable;
- (g) provide for a discount for early payment of any such fee or charge or a penalty for late payment, or both, on an equal basis to persons liable to pay the fee, charge or levy; and

- (h) provide for any other matter to facilitate the imposition and collection of any fee, charge or levy.
- (3) The General Manager is empowered to determine any matter referred to in subsection (2) if no applicable determination has been prescribed in relation to any fee, charge or levy under this Act.

41. Powers in relation to the collection and recovery of fees-(1) In relation to any fee, charge or levy imposed by the Authority under this Act:

- (a) an invoice may require payment upon delivery, or on such other terms as are specified in the invoice;
 - (b) in the absence of any specified time for payment, the fee, charge or levy is payable 30 days after the delivery of the invoice, or the provision of the service, as determined by the General Manager;
 - (c) an invoice is deemed to have been duly rendered if it is handed to any officer on board an aircraft to which the fee, charge or levy applies; and
 - (d) payment shall be made in Samoan tala, unless the General Manager approves otherwise.
- (2) Any fee, charge or levy imposed in relation to the provision of aviation related services to an airport outside Samoa may be recovered, in the absence of any agreement relating to the provision of the services, from either:
- (a) the government of the country in which the services are provided;
 - (b) the government agency responsible for civil aviation or airport management in the country in which the services are provided; or
 - (c) any user of the services provided by the Authority, as if it were a debt owing to the Authority.
- (3) Any fee, charge or levy owed to the Authority and unpaid as at the date due for its payment shall be subject to penalty interest fixed in the amount of 15% per annum, assessed for the period for which the fee, charge or levy remains unpaid.

42. Modification of fees, charges and levies under the Civil Aviation Act 1998-(1) Any determination of airport fees, charges and levies under this Act, by regulation or as otherwise provided, may be made in the place of any fee prescribed under the Civil Aviation Act 1998.

(2) In any case to which subsection (1) applies, the relevant regulation or determination shall be deemed to have the full force and effect as if it were made under section 37(4) of the Civil Aviation Act 1998.

(3) All fees, charges and levies imposed by the Authority since its establishment are deemed to have been validly imposed and due to the Authority in accordance with this Act or the Civil Aviation Act 1998, and are recoverable by the Authority in any court of competent jurisdiction.

43. Recovery of fees, charges or levies for aviation related services-(1) Subject to subsection (2), where a fee, charge or levy is payable under this Act in respect of any function, power, duty, or service carried out or provided by the Authority in relation to any aircraft, the person whose name appears as the owner or operator of the aircraft on any relevant register of aircraft shall be deemed to be liable to pay that fee, charge or levy.

(2) Any person who would otherwise be liable to pay a fee, charge or levy in relation to an aircraft under subsection (1) shall not be so liable if that person:

- (a) proves to the satisfaction of the General Manager that during any relevant period of use of the aircraft, that person was not entitled, whether alone or together with some other person, to possession of the aircraft or that another person was unlawfully in possession of it; and
- (b) has taken all reasonable steps to supply the Authority with such information as would identify the actual user.

PART IX
FINANCIAL, AUDIT AND REPORTING
REQUIREMENTS

44. Powers of the Auditor-(1) The Auditor, or a person authorised to act by the Auditor, shall be 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 section 45.

(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 shall be liable upon conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding three (3) months, or both.

45. Accounts, audit, and annual report-(1) The Authority shall:

- (a) keep full and proper accounts and other records of its operations at all times (including the accounts relating to any Business Unit established and operated in accordance with Part VI); and
- (b) prepare a balance sheet and such other statements of accounts as are necessary to fully and accurately show the financial position of the Authority and the financial results of its operations during that year, as soon as reasonably practicable after the end of each financial year.

(2) The accounts of the Authority shall be audited each year by the Auditor.

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

- (a) a report of its proceedings and operations for that year together with a copy of its audited accounts for that year; and
 - (b) the report of the Auditor on 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 General Manager and the chief financial officer of the Authority shall sign off on all accounts and reports kept or prepared in accordance with the 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.

46. 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 in accordance with section 45.

47. Other obligations of Directors-(1) All Directors of the Authority shall prepare and submit annual Disclosure Statements to the Chairperson in a form and manner required by the Ministry of Finance from time to time.

(2) The Minister of Finance may require that such Statements from the Directors of the Authority include all relevant details so as to make full and accurate disclosure of:

- (a) the remuneration received by the Director from the Authority during the year to which the Statement applies;
- (b) the number of meetings of the Board, and any committee of the Board of which the Director is a member, attended by the Director during the year to which the Statement applies;

- (c) the reasons for failing to attend any Board or Committee meeting;
 - (d) all disclosures made by the Director of any conflict of interest during the year to which the Statement applies;
 - (e) any other position held by the Director which may give rise to any potential conflict of interest; and
 - (f) any other matter required to be disclosed by the Minister, or in accordance with the requirements of the Public Finance Management Act 2001.
- (3) A Director shall be deemed to be suspended from office if he or she fails to comply with the requirements of subsection (1).
- (4) Subject to subsection (5), the matters disclosed in all Disclosure Statements submitted under this section may be reported upon in all audit and annual reports prepared by or on behalf of the Authority.
- (5) The information provided in Disclosure Statements submitted under this section shall be kept confidential in accordance with the requirements of the Public Finance Management Act 2001.

48. Audit Committee and Risk Management

Committee-(1) An Audit Committee shall be established by the Board, and its membership may include one (1) or more qualified persons who are not a Director of the Authority.

- (2) The functions of the Audit Committee are:
- (a) to undertake or oversee all aspects of the internal audit of the Authority's operations, management and financial procedures;
 - (b) to ensure that the Authority complies with accepted international best practice of corporate management and reporting, and to report to the Board on any failure by the Authority to achieve such compliance; and
 - (c) to assess any proposal by the management of the Authority to recommend the writing off of any debt owed to the Authority, and to provide its recommendation to the Board on all such proposals.

(3) A Risk Management Committee shall be established by the Board, and shall be comprised of:

- (a) such number of Directors as the Board determines from time to time;
 - (b) the General Manager;
 - (c) the Internal Auditor;
 - (d) the Authority's internal lawyer (if any); and
 - (e) any other appropriately qualified persons who are not a Director or employee of the Authority, and who the Board considers may assist the committee to discharge its functions.
- (4) The functions of the Risk Management Committee are:
- (a) to identify and assess all risks applying to the operations and management of the Authority;
 - (b) to develop policies of risk management for the Authority's operations and management;
 - (c) to oversee and report on any matter associated with the identified risks, and the application of the risk management policies;
 - (d) to ensure that all aspects of the risk management policies, and of their application, are disclosed to the Board, and to its management and staff, and are reported on in all reports required to be prepared and submitted by the Authority; and
 - (e) to review any matter associated with the recovery by the Authority of monies owed to it, and any other process which the committee considers to constitute some risk to the proper management of the Authority's debt recovery procedures.

49. Inquiries into malpractice-(1) For the purposes of conducting any audit or investigation in relation to any functions provided for in section 48, the Audit Committee and the Risk Management Committee shall have the powers and protections applying to a Commission of Inquiry under the Commissions of Inquiry Act 1964, including:

- (a) protections in accordance with sections 5 and 9 of that Act;
- (b) powers as provided by section 6 of that Act;

- (c) power to hear persons having an interest in a matter which is the subject of a Tribunal proceeding as provided by section 7 of that Act; and
 - (d) power to summon witnesses and require the production of documents.
- (2) Any person who, after being summoned to attend before the Audit Committee or the Risk Management Committee, or to produce to the Authority any books, papers, writings, or documents:
- (a) fails to appear according to the terms of the summons;
 - (b) refuses to be sworn or to give evidence or to make answer to such questions as may be put to the person by the Committee, or any member of the Committee relating to the subject of the inquiry; or
 - (c) fails to produce any such books, papers, writings, or documents,
- is liable for every such default to a fine not exceeding 50 penalty units.

50. Protection of informants - No action may be taken to affect the employment within the Authority, or the status of an officer of the Authority, who:

- (a) provides information to the Audit Committee or the Risk Management Committee; or
- (b) provides any report or information to any person concerning a breach of any requirement applying under this Act, or any other law which imposes financial or other regulatory requirements on the Authority.

51. Protection from liability - No action for defamation may lie against any person who prepares a report, assists in the preparation of a report or who provides information to assist in the preparation of any report by the Audit Committee or the Risk Management Committee that is consistent with a function of such a committee under this Act.

52. Write-offs-(1) The writing-off of any debt due to the Authority shall be in accordance with:

- (a) the requirements of section 120 of the Public Finance Management Act 2001;
 - (b) international best corporate management and accounting practice; and
 - (c) the procedures stated in subsection (2).
- (2) No debt owed to the Authority shall be written-off except in accordance with a decision of the Board made:
- (a) after a recommendation has been made by the Audit Committee supporting the writing-off of the debt; and
 - (b) after all available and reasonable steps have been taken to recover the amount outstanding.
- (3) The provisions of this section do not apply to any decision to suspend or write-off the interest component of any amount which is in arrears, if such a decision has been made in accordance with a policy approved by the Board.
- (4) Any amount that has been lawfully written-off in accordance with this section shall be deemed to be a bad debt for the purposes of section 20(1) of the Income Tax Act 1974, and subject to section 20(2) of the Income Tax Act 1974 the Authority shall not be liable to pay tax on any such amount.

PART X
MODIFICATION OF APPLICATION
OF CERTAIN ACTS

53. Application of the Public Bodies (Performance and Accountability) Act 2001 to the Authority-(1) The requirements under sections 5 and 6 of the Public Bodies (Performance and Accountability) Act 2001 for registration under the Companies Act 2001 and for the issue of shares, shall only apply to the Authority if Cabinet determines that the Authority is to be the subject of a major reorganisation or is to be prepared for privatisation.

(2) The provisions of section 5 of the Public Bodies (Performance and Accountability) Act 2001 which purport to give prevalence of certain laws over others do not apply to this Act, and wherever specific provision is made under this Act then that provision shall prevail over the Public Bodies (Performance and Accountability) Act 2001 and the Companies Act 2001.

(3) Subject to section 54, no provision of the Public Bodies (Performance and Accountability) Act 2001 which applies the provisions of the Companies Act 2001 to the management of a public trading body shall apply to the Authority until a determination is made by Cabinet under subsection (1).

(4) For the purposes of section 9 of the Public Bodies (Performance and Accountability) Act 2001, the performance or provision of any of the following functions and services at the request of Government shall be deemed to be a community service obligation performed by the Authority:

- (a) the operation of any airport that is unable to generate revenues in excess of its operating expenses;
- (b) the provision of any aviation related service at a cost that is insufficient to cover the expense to the Authority of providing the service;
- (c) the provision of any service to the community at or near an airport operated by the Authority by utilising the equipment or manpower of the Authority, for which no, or no adequate, fee is to be paid to the Authority; and
- (d) the provision of any service or facility at an airport operated by the Authority to any Government Ministry or agency, for which no, or no adequate, fee is to be paid to the Authority.

54. Application of the Companies Act 2001 to the Authority-(1) Despite the provisions of the Public Bodies (Performance and Accountability) Act 2001, the only provisions of the Companies Act 2001 which shall apply to the Authority and its Directors prior to a determination being made under section 53(1) are:

- (a) the application of the solvency test to the payment of dividends in accordance with section 28 of the Companies Act 2001;
 - (b) the fundamental duties of Directors under section 65 of the Companies Act 2001;
 - (c) the use and disclosure of information by Directors as provided for in section 69 of the Companies Act 2001;
 - (d) the standard of care of duties under section 70 of the Companies Act 2001;
 - (e) indemnities and insurance for Directors as provided for in sections 74 and 75 of the Companies Act 2001;
 - (f) disqualifications of Directors and managers as provided for in sections 77, 78 and 82 of the Companies Act 2001;
 - (g) the rights of shareholders to take action as provided for in section 100 of the Companies Act 2001; and
 - (h) 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 8 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 XI

MISCELLANEOUS PROVISIONS

55. Indemnity provision-(1) No Director or employee of the Authority, or member of any Committee established by the Authority in accordance with this Act, shall be personally liable for any act done or default made in good faith on behalf of the Authority or by any of its committees, in the course of any operation or activity of the Authority.

(2) The Authority shall not be subject to any civil or criminal liability arising from the exercise of any function or power under this Act which is done in good faith.

56. Use of approved Forms - The General Manager may from time to time approve forms for any matter related to the performance of the Authority's function and power, or for any other purpose consistent with this Act.

57. Regulations-(1) The Head of State, acting on the advice of Cabinet, may from time to time make regulations not inconsistent with this Act to provide for such matters as are required or contemplated by this Act or are necessary for giving full effect to the provisions of this Act and for its due administration.

(2) Without limiting the general power conferred by subsection (1), regulations may be made to:

(a) achieve compliance with or assist the Authority to participate in, any applicable international or regional convention, agreement, arrangement or program relating to airport operations or the provision of aviation related services,

PROVIDED THAT such regulations shall be in accordance with all necessary approvals by the Civil Aviation Authority;

(b) empower any committee established in accordance with this Act;

(c) provide for additional powers in relation to the application or enforcement of operating procedures, by-laws or codes of practice made under section 25;

(d) provide for additional powers to protect the Authority's assets and facilities, or any air traffic control or communications facility or equipment;

(e) provide for any matter relating to the transfer or closure of any airport in accordance with this Act;

(f) provide for a re-organisation of the Authority approved and implemented in accordance with Part VI;

(g) provide for any additional fee, charge or levy, and for any matter relating to the setting, collection or enforcement of any fee, charge or levy imposed under the authority of this Act;

- (h) manage, control or regulate within airports managed by the Authority the provision of -
 - (i) ground handling services; or
 - (ii) cargo services operated by the Authority as approved by the Civil Aviation Authority in accordance with the Civil Aviation Act 1998;
- (i) prescribe arrangements for the collection, investment or disbursement of any levy collected under section 39(2) (k); and
- (j) prescribe procedures and arrangements for the leasing or allocation of premises within airports managed by the Authority to ensure fairness and transparency, and to maximise financial returns to the Authority.

58. Repeal - The Airport Authority Act 1984 is repealed.

59. Savings and Transitional Provisions-(1) The Directors of the Authority holding office at the time of commencement of this Act shall continue to hold office as Director as if appointed under this Act and until they are replaced or re-appointed by Cabinet in accordance with the provisions of Part III.

(2) The General Manager of the Authority holding office at the time of commencement of this Act shall continue to hold office as General Manager as if appointed under this Act.

(3) Despite the provisions of this Act, all applications, prosecutions and other matters arising out of or under the provisions of the Airport Authority Act 1984 which are not determined or otherwise dealt with under such provisions at the date of the commencement of this Act shall be determined or otherwise dealt with under the provisions of the Airport Authority Act 1984.

**The Airport Authority Act 2012 is administered
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