

# EXCHANGE CONTROL REGULATIONS 1999


## SAMOA

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PURSUANT to section 55 of the Central Bank of Samoa Act 1984, I, MALIETOA TANUMAFILI II, Head of State, acting on the advice of Cabinet **HEREBY MAKE** the following Regulations

DATED at Apia this 6th day of August 1999

  
(Malietoa Tanumafili II)  
HEAD OF STATE

# REGULATIONS

## **1 Title**

These regulations may be cited as the Exchange Control Regulations 1999.

## **2 Commencement and repeal**

- (1) These regulations shall come into force on the date that they are signed by the Head of State.
- (2) Upon the coming into force of these regulations the Exchange Control Regulations 1961 (as amended) shall be repealed.

## **3 Interpretation**

In these regulations, unless the context otherwise requires:

**“bank”** means financial institution whose operations include the acceptance of deposits subject to withdrawal or transfer by cheque or other means of third party transfer;

**“Central Bank”** means the Central Bank of Samoa established in accordance with subsection (1) of Section 3 of the Central Bank of Samoa Act 1984;

**“Foreign currency”** means the bank notes or other currency of any country other than Samoa, and includes postal notes, money orders, promissory notes, bills of exchange, and any other negotiable instruments payable otherwise than in the currency of Samoa;

**“Foreign exchange dealer”** means a bank or a person currently holding a licence under Regulation 5;

**“Minister”** means the Minister of Finance, and includes any person for the time being authorised by the Minister to exercise any of his powers or functions under these regulations;

**“Money”** includes the bank notes and other currency of any country, and includes postal notes, money orders, promissory notes, bills of exchange and any other negotiable instruments payable in the currency of any country;

**“Net proceeds of exports”** means the gross proceeds of exports less such commissions, charges and deductions as are customary and reasonable having regard to established trade practices relative to the goods being exported;

*“Resident of Samoa”* means a citizen or permanent resident of Samoa who is deemed to be a resident of the country by virtue of having his home in Samoa, or a company incorporated in Samoa or that has its Head Office or centre of administrative management in Samoa

*“Person”* includes a corporation sole and also a body of persons, whether corporate or unincorporate;

*“Security”* includes shares, stocks, bonds, debenture stock, Treasury Bills and Central Bank of Samoa Securities (but does not include bills of exchange or promissory notes).

**4** *Restrictions on the taking or sending of money and securities from Samoa*

- (1) Subject to the exemptions set out in subclause (2) of this regulation, no person shall, except with the consent of the Central Bank -
  - (a) take or send money out of Samoa;
  - (b) draw or negotiate any bill of exchange or promissory note, transfer any security or acknowledge any debt so that a right (whether actual or contingent) to receive a payment in Samoa is created or transferred as consideration:-
    - (i) for receiving a payment or acquiring property outside Samoa;
    - (ii) for a right (whether actual or contingent) to receive a payment or acquire property outside Samoa - or make any payment in Samoa as such consideration;
  - (c) create or transfer a right (whether actual or contingent) to receive a payment or acquire property outside Samoa or dispose of or otherwise deal with any money, securities, or property held or payable outside Samoa as consideration for receiving a payment or acquiring property in Samoa, or for the discharge of a debt payable in Samoa;
  - (d) take, send or transfer any securities from Samoa;
  - (e) make an entry in a register in Samoa that recognises or gives effect to a transfer of any securities to a person resident outside Samoa;
  - (f) if he is a resident of Samoa, be a party to any transaction whereby foreign currency is exchanged for Samoan money otherwise than through a foreign exchange dealer.

- (2) The following transactions shall be exempt from the restrictions imposed by the foregoing provisions of this regulation
  - (a) the transfer of money to Samoa through a foreign exchange dealer;
  - (b) the taking by any person leaving Samoa of local currency not exceeding a value determined to apply from time to time by the Central Bank;
  - (c) any class of transactions for the time being exempted by the Central Bank from the said restrictions by notice published in the Savali.
- (3) For the purposes of this regulation money shall be deemed to be taken or sent, if it is taken or sent by telegraph or post or by means of draft, letter of credit, traveller's cheque, transfer of account, or any other means whatsoever.

## 5 *Foreign Exchange Dealers*

- (1) Only banks or persons licensed under this regulation to be foreign exchange dealers may:
  - (a) hold themselves out to be carrying on the business of a foreign exchange dealer; and
  - (b) exchange currency under these Regulations as a foreign exchange dealer;
- (2) An application for a licence under this regulation shall:
  - (a) be made to the Central Bank;
  - (b) be in such form as is determined by the Central Bank;
  - (c) be accompanied by an application fee of \$200;
  - (d) contain such further information as is required by the Central Bank.
- (3) Upon receipt of an application in compliance with sub-regulation (2), the Central Bank shall:
  - (a) issue the licence if it is satisfied that all the requirements (as determined from time to time) for the carrying out of the business of a foreign exchange dealer are met; or

- (b) advise the applicant in writing that the application has been refused.
- (4) In granting an application the Central Bank may impose any conditions on the licence that it think fit, and may from time to time vary or add to those conditions.
- (5) A person aggrieved by a decision to reject an application may appeal to the Minister in writing and by paying a fee to the Central Bank of \$100 within 30 days from date of notification.
- (6) The decision of the Minister on an appeal shall be final.
- (7) All licences issued under this Regulation shall be valid for a period of 12 months.
- (8) The annual fee for a licence shall be \$500.

**6**     *Restrictions on Dealings in Foreign Currency*

- (1) This Regulation shall not apply to a licensed foreign exchange dealer.
- (2) Except with the permission of the Central Bank, no person shall, in Samoa, buy foreign currency from or sell foreign currency to any person, other than a foreign exchange dealer.
- (3) Except with the permission of the Central Bank –
  - (a) no person shall, in Samoa; and
  - (b) no resident of Samoa, shall outside Samoa –  
borrow foreign currency from or lend foreign currency to any other person.
- (4) Where –
  - (a) a person that has been authorized to borrow foreign currency in Samoa; or
  - (b) a resident of Samoa has been authorized to borrow foreign currency outside Samoa –  
that person shall comply with any conditions imposed by the Central Bank.

7 *Money and securities taken, sent or transferred from Samoa*

(1) For the purposes of this regulation the term "authorised officer" includes any officer of the Central Bank, Customs and any person acting with the authority of the Central Bank or with the authority of any person acting on behalf of the Central Bank.

(2) Every person who is about to leave Samoa shall, immediately prior to his embarkation on the vessel or aircraft in which he proposes to leave Samoa, make and deliver to an authorised officer a written statement in such form as the authorised officer may require, as to the money or securities that he is taking with him whether on his person or otherwise:

**PROVIDED THAT** an authorised officer may in his discretion relieve any person of his obligation to make and deliver such a written statement, and may, if he thinks fit, require him instead to make an oral declaration.

(3) Any authorised officer may require any person who is about to leave Samoa, or any person having charge of any person who is about to leave Samoa, to produce and deliver to the authorised officer any money or securities that any such person may have with him or under his control.

(4) For the purpose of discovering whether any person about to leave Samoa has in his possession or under his control or is taking from Samoa any money or securities in contravention of these regulations, any authorised officer may search that person and may examine and search any article that he is taking with him.

**PROVIDED THAT** any search under this provision shall be conducted by an officer of the same sex as that of the person being searched.

(5) Any examination and search made by an authorised officer pursuant to the foregoing provisions of this regulation may be made on board any ship or aircraft that is about to leave Samoa, or may be made before the person concerned has actually gone on board such ship or aircraft.

(6) Any authorised officer may examine and search any goods consigned or otherwise taken or sent or proposed to be taken or sent from Samoa to a destination outside Samoa for the purpose of ascertaining whether there are being sent with such goods any money or securities.

(7) Any money or securities produced to or discovered by an authorised officer in accordance with this regulation shall be seized by that officer unless he is satisfied that the taking or sending thereof from Samoa would not in the circumstances have been in contravention of these regulations.

- (8) Any money or securities seized by an authorised officer under the provisions of this regulation shall be forfeited to and shall become the property of the Government of Samoa unless the Minister otherwise directs.

**8** *Acquisition by a bank of foreign remuneration for work or services provided in Samoa for foreign residents.*

- (1) Where any person resident in Samoa receives or becomes entitled to receive outside Samoa any remuneration for any work done or to be done, or for any services performed or to be performed, wholly or partly in Samoa (whether by him or by any other person) for any person not resident in Samoa, he shall forthwith.
- (a) if the remuneration is in the form of overseas money or of a credit lodged with an overseas bank offer it or cause it to be offered to a bank in Samoa;
- (b) if it is not in either of those forms, convert it or cause it to be converted into the equivalent value in one of those forms and offer it or cause it to be offered to a bank in Samoa in that form.
- (2) Where a bank accepts any remuneration offered to it under this regulation, it shall forthwith pay in Samoa to the person by or on whose behalf it is so offered, or to such other person as he may direct in writing, the equivalent in Samoan currency of that remuneration at the current rate of exchange.
- (3) Each person resident in Samoa to whom this regulation applies shall supply to the Central Bank, on or before the 14th of each month, a statement in writing, verified by a declaration, of the remuneration to which this regulation applies and to which he has become entitled in the last preceding month.

**9** *Control of exports and of the proceeds of exports*

- (1) Nothing in this regulation shall apply with respect to goods of any of the following classes namely:
- (a) any goods exported or proposed to be exported through the Post Office otherwise than for the purposes of trade, unless the Central Bank, by notice given in such manner as in the circumstances it thinks sufficient, determines, either generally with respect to any specified goods or with respect to goods of any specified class, that they shall not be exported except in accordance with this regulation; or

- (b) any goods exported as ship's stores; or
  - (c) any other goods in respect of which the Central Bank, by notice given in such manner as it thinks fit, determines that they shall not be subject to this regulation.
- (2) Any notice given by the Central Bank for the purposes of the last preceding sub-clause may be at any time varied or revoked in like manner.
- (3) Except as provided in sub-clause (1) hereof, no goods shall be exported from Samoa except by permission of the Central Bank or of a person acting with the authority of the Minister.
- (4) In the case of goods proposed to be exported for sale, permission to export, if granted, shall be subject to the following conditions (without limiting the authority of the Central Bank to impose such other conditions as it may think fit) namely:
- (a) that the exporter, or his agent, or some responsible servant of the exporter on his behalf shall make application in a form issued by the Central Bank (which form shall be available from the Central Bank), or to the effect thereof, for permission to export such goods;
  - (b) that on obtaining any shipping documents or drafts relative to the goods to which the licence related the licensee shall forthwith deliver them to the Central Bank;
  - (c) that the exporter shall cause the net proceeds of the sale of the goods to be made available to a bank in Samoa in a foreign currency which is satisfactory to that bank;
  - (d) that a copy of every permission to export goods for sale shall be supplied to the relevant bank, and the bank shall ensure as far as is reasonably practicable that the net proceeds of exports are made available to it.
- (5) The Central Bank may from time to time, approve different forms for the purposes of sub-regulation (4), applying to different kinds of goods and requiring the provision of any information that the Central Bank thinks fit.
- (6) In the case of goods proposed to be exported otherwise than for sale the exporter, or his agent, or some responsible servant of the exporter shall make written application to the Central Bank for permission to export such goods and shall state in the application the circumstances in which and the conditions under which the goods are being or are intended to be



exported, and the Central Bank may thereupon in its discretion grant or refuse permission for their exportation. Any permission to export goods under this sub-clause may be given subject to such conditions (if any) as the Central Bank thinks fit to impose.

#### **10 *Right of appeal***

There shall be a right of appeal from every decision of the Central Bank or other person acting pursuant to or in administration of these regulations to the Minister, whose decision on any matter shall be final.

#### **11 *Granting of consents and exemptions***

- (1) Every person who applies to the Central Bank for any consent, permission, or exemption under these regulations shall furnish such information and particulars as the Central Bank may from time to time require.
- (2) Subject to the provisions of these regulations, the Central Bank in its discretion, may refuse any such application, or may grant the application wholly or partly, and either unconditionally or upon or subject to such conditions as it thinks fit.
- (3) Any consent, permission, or exemption granted under these regulations may be at any time revoked by the Central Bank (whether or not it granted it) or by the other person (if any) by whom it was granted, and any condition upon or subject to which any such consent, permission, or exemption is granted from time to time be varied, revoked, or added to by the Central Bank or by the other person (if any) who grants the consent, permission, or exemption.

#### **12 *Notices***

- (1) The Central Bank may give notice in the Savali of the exercise of any of its powers under these regulations, or of any direction given by it under these regulations, and all persons shall be bound thereby.
- (2) The Central Bank may, without any notice in the Savali, give notice to any person of any direction given by the Central Bank under these regulations, and every person to whom the notice is given shall be bound thereby.

13 *Production of books*

If the Central Bank has reason to suspect that any person has committed an offence against these regulations, the Central Bank may require that person or any other person to produce to him or as he directs, any books or documents which may be in the possession or under the control of any such person and which in the opinion of the Central Bank may furnish evidence in relation to that offence.

14 *Regulations binding on trustees, etc*

No obligation or limitation imposed on any person by or by virtue of any Act or other instrument determining his functions or powers, or by virtue of any trust, or otherwise howsoever, shall prevent or excuse that person from complying with any provision of these regulations or of any direction, notice, requirement, or conditions given or imposed under these regulations.

15 *Offences and penalties*

- (1) Every person commits an offence against these regulations who
  - (a) with intent to deceive, makes any false or misleading statement or any material omission in any declaration or application made for the purposes of these regulations or in any communication with or application to the Central Bank or any other person (whether in writing or otherwise) for the purposes of these regulations;
  - (b) resists, obstructs or deceives any person who is exercising or attempting to exercise any power or function under these regulations;
  - (c) without lawful excuse, acts in contravention of or fails to comply in any respect with any provision of these regulations or any direction, notice, requirement, or condition given or imposed under these regulations.
- (2) Every person who commits an offence against these regulations shall be liable on summary conviction
  - (a) in the case of an individual, to imprisonment for a term not exceeding 2 months, or to a fine not exceeding 20 penalty units (or, if the offence is a continuing one, to a fine not exceeding 10 penalty units for every day during which the offence continues) or to both such imprisonment and fine;

- (b) in the case of a body corporate, to a fine not exceeding 100 penalty units or, if the offence is a continuing one, to a fine not exceeding 50 penalty units for every day during which the offence continues;
- (3) The Central Bank may suspend or cancel any licence or approval under these Regulations if it is satisfied that the person holding such licence or approval is in breach of any requirement imposed by these Regulations or has committed any offence prescribed by these Regulations.

**16** *Transition and savings*

- (1) Any approval, permit or authorisation given under the Exchange Control Regulations 1961 and which is valid and in force as at the date that these Regulations come into force, shall be deemed to have been given or made under these Regulations and, subject to paragraph (2), shall remain in force for the remainder of its duration.
- (2) Notwithstanding paragraph (1), the Central Bank may for any reason that it thinks fit, require the holder of an approval, permit or authorisation saved by paragraph (1), to make application under these Regulations for an approval, permit or authorisation in respect of the matter covered by it, on such terms and in such manner as it directs.