



SAMOA

HOUSING CORPORATION ACT 2010

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HOUSING CORPORATION ACT 2010

2010**No. 24**

AN ACT to continue the Housing Corporation established under the Housing Corporation Act 1989 and to provide for the functions, powers, and duties of the Corporation under modern and reformed arrangements, and for related

purposes.

[Assent and commencement date: 19 October 2010]

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

**PART 1
PRELIMINARY**

1. Short title and commencement – (1) This Act may be cited as the Housing Corporation Act 2010.

(2) This Act comes into force on the date of its assent by the Head of State.

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

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

“Board” means the Board of the Corporation as provided for in section 3(2) and the provisions of Part 3;

“Corporation” or “Housing Corporation” means the Samoa Housing Corporation continued by section 3;

“Government” means the Government of the Independent State of Samoa;

“Minister” means the Minister responsible for Finance;

“securities” has the same meaning as in the Securities Act 2006.

**PART 2
SAMOA HOUSING CORPORATION**

3. Continuation of the Housing Corporation – (1) The Housing Corporation established under the Housing Corporation Act 1989 is continued under this Act under the name of the Samoa Housing Corporation, and shall operate and be managed in accordance with the provisions of this Act.

(2) The Samoa Housing Corporation may operate under the name “Housing Samoa” or any other name approved by the Board.

(3) The management of the Corporation is vested in its Board which shall be appointed and hold office under Part 3.

(4) The Corporation is a body corporate with perpetual succession and a common seal and:

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

(5) The powers of the Corporation shall not be affected by any vacancy in the membership of the Board.

4. Offices of the Corporation – (1) The principal office of the Corporation shall be in Apia.

(2) The Corporation may establish such branch offices in Apia and elsewhere, as the Board thinks fit.

5. Functions of the Corporation – (1) The Corporation continues to:

- (a) have the principal function of lending money on mortgage or other security for the purposes of erecting, renewing, repairing, extending, purchasing or otherwise acquiring a home for the personal occupation of the borrower or the borrower's family; or
- (b) assist the borrower to acquire land for the purpose of erecting a home for personal occupation.

(2) The Board shall:

- (a) develop and apply policies and procedures for lending money in accordance with subsection (1); and
- (b) ensure that borrowers from the Corporation are generally persons who are not able or eligible to secure loans from other commercial financial institutions.

(3) In addition to the principal function in subsection (1) the Cabinet may approve additional functions for the Corporation, including roles and responsibilities in relation to the following:

- (a) the formulation and implementation of national housing policies;
- (b) the promotion of home ownership schemes;

- (c) administrative or operational support for the housing industry of Samoa;
- (d) the management of the Government's housing portfolio;
- (e) any other relevant functions which Cabinet regards as being in the interest of promoting home ownership or resolving issues related to shelter in Samoa.

6. Operating principles – (1) In determining whether or not a loan or financial, technical, or advisory assistance shall be given to a borrower or stakeholder in Samoa's housing industry, and in the performance of other functions under this Act, the Corporation shall have regard to the following considerations:

- (a) recognising that access to adequate shelter is a fundamental human right; and
- (b) maximising returns to the Corporation from its loan portfolio and other activities by applying sound lending and commercial practice, whilst ensuring that its borrowers are persons who might otherwise be deprived of access to other sources of finance for home ownership and construction; and
- (c) generally raising the level of private home ownership in Samoa, and the quality of home construction and residential accommodation, with the resultant contribution to the alleviation of poverty; and
- (d) assisting the proper development and expansion of the housing industry in Samoa by promoting the formation of builders' associations, implementing policies which aim to protect the interests of persons who are arranging for the construction of their own homes, and promoting occupational safety and health in the industry, and by other appropriate means; and
- (e) contributing to the orderly development of Samoa by ensuring the observance of laws relating to physical planning and building construction, and to the protection of the environment; and
- (f) otherwise ensuring that the national interest of Samoa will be served by the operations of the Corporation.

(2) In lending any money to a person, the Corporation shall obtain the best possible security for the repayment of the loan to the Corporation in accordance with accepted commercial practice in the financial sector.

(3) Nothing in subsection (2) prevents the Board from approving arrangements that are aimed to ensure that adequate funding is provided for:

- (a) the development of housing and home ownership schemes; and
- (b) the development of enterprises in the housing industry; and
- (c) the enhancement of economic growth in other related sectors of significant national interest.

7. Corporation to follow approved policy of the Government – In exercising its functions and powers under this Act or any law, the Corporation shall give effect to approved policies of the Government as communicated to the Corporation in writing by the Minister for Public Enterprises.

8. Powers of the Corporation – (1) The Corporation shall have all the powers that are reasonably necessary or expedient to enable it to carry out its functions, roles and responsibilities.

(2) Without limiting subsection (1), the Corporation may:

- (a) make loans to a person, and give guarantees in respect of a person in manner which is consistent with the requirements of this Act; and
- (b) subscribe for, purchase, underwrite, or sub-underwrite shares, debentures, bonds, or other securities issued or guaranteed by the Government, or by an enterprise; and
- (c) buy, lease, or otherwise acquire, hold, manage, improve, or develop any real and personal property; and
- (d) develop, sell, let, mortgage, charge, or otherwise deal with or dispose of any of its property; and
- (e) execute, make, draw, accept, endorse, discount, issue, and negotiate cheques, promissory notes, bills of exchange, bills of lading, other drafts, warrants, bonds, debentures, coupons, and other negotiable or transferable instruments, and buy, sell, or

otherwise deal in such instruments; and

- (f) participate in the management of enterprises to which it has given, or is to give, a loan or financial, technical, or advisory assistance; and
 - (g) place funds not immediately required by it on deposit with a Corporation, or invest such funds in Government securities or other approved Government investments; and
 - (h) take such steps as may be necessary to recover its financial interest from a borrower or to protect its interest in a housing development; and
 - (i) make such charges for the provision of its services as it thinks fit; and
 - (j) subject to the other provisions, borrow money from the Government or from a Corporation or lending institution (whether in Samoa or overseas) on such terms and conditions as the Board approves; and
 - (k) enter into joint ventures, partnerships, agency relationships and any other appropriate arrangement for the performance of its functions; and
 - (l) create a subsidiary and operate a special account for the purposes of paragraph (k).
- (3)** The Board may approve a policy or procedural requirement for any purpose consistent with this Act, and may:
- (a) specify criteria to be applied in determining which persons or classes of persons are eligible to receive loans; and
 - (b) specify criteria to be applied with regard to types of homes and the value, construction and nature of homes in respect of which loans may be under this Act; and
 - (c) fix maximum amounts which may be advanced to 1 or more persons for the purposes of this Act, and the nature or extent of security to be given with respect to loans; and
 - (d) fix fees to be paid for applications for loans, or for any other matters under this Act for which fees may appropriately be charged.
- (4)** The exercise of any power under this section shall be under the applicable regulatory requirements imposed by the

Central Bank of Samoa and applying to the Corporation under a relevant law or other lawful authority.

PART 3

MANAGEMENT OF THE CORPORATION

9. The Directors of the Corporation – (1) The Board of the Corporation comprises of not more than 5 directors who shall be appointed by Cabinet in accordance with any law and approved Government policy relating to the management of public bodies.

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

(3) The directors of the Corporation shall be appointed by the Head of State, acting on the advice of Cabinet, and may be removed from office by the Cabinet.

(4) A representative of a joint venture partner of the Corporation may be appointed to the Board by Cabinet in accordance with a joint venture agreement.

(5) No person may be appointed to be a director, or may continue to hold office, while that person is holding a full-time office in the Corporation.

(6) From 31 December 2010:

(a) no Member of Parliament, constitutional officer or public servant shall be a member or re-appointed as a member of the Board unless Cabinet has certified that such appointment or re-appointment is necessary; and—

(i) in the national interest; and

(ii) that the Member of Parliament, constitutional officer or public servant has particular qualifications or business experience which the Corporation requires on its Board and such qualifications or business experience cannot be found elsewhere; and

(b) where a Member of Parliament, constitutional officer or public servant is appointed or re-appointed under this section, that person shall not receive remuneration or other benefits from the Corporation for services as a member of the Board.

10. Terms of office of directors – A director holds office for the term stated in the instrument of appointment or until replaced under this Act.

11. Remuneration of appointed directors – A director shall be paid such remuneration and allowances as may be fixed by Cabinet.

12. Meetings of directors – (1) Meetings of directors shall be held at such times and places as the Chairperson appoints.

(2) The Chairperson shall call a meeting whenever required to do so in writing by at least 3 directors.

(3) At a meeting 3 directors form a quorum.

(4) The Board may approve the use of a procedure whereby a draft resolution is circulated to directors, and if at least 3 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 a 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 of the directors to preside at that meeting.

(7) At a 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) A question arising at a meeting shall be decided by a majority of the votes.

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

13. Disclosure of interest – (1) No director shall act as a delegate of a business or commercial enterprise, or receive or accept directions from a business or commercial enterprise in respect of duties to be performed under this Act:

PROVIDED THAT this restriction does not apply to a director who is appointed to represent the interests of a joint venture partner of the Corporation.

(2) A director who, otherwise than as a director, is directly or indirectly interested in an arrangement entered into, or proposed

to be entered into by the Corporation, shall as soon as possible after the relevant facts have come to his or her notice, disclose the nature of such interest at a meeting of the Board.

(3) A disclosure under this section shall be recorded in the minutes of the meeting of the Board and the director shall not take part after the disclosure in a 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 a director acts contrary to the provisions, or uses information obtained through the Corporation 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 Corporation.

(5) A person terminated under subsection (4) is not eligible for reappointment as a director of the Corporation.

14. Contracts by the Corporation – (1) Contracts on behalf of the Corporation may be made:

- (a) in the form of a deed which shall be in writing and be under the common seal of the Corporation; or
- (b) in the form of a written agreement, which shall be in writing and be either—
 - (i) under the common seal of the Corporation; or
 - (ii) signed by a person or persons acting in accordance with a general or specific direction of the Board.

(2) The common seal of the Corporation shall not be affixed to a document except in accordance with a resolution of the Board, and the execution of a document so sealed shall be attested by 2 directors.

15. Committees – (1) To assist the Corporation to discharge its functions, the Board may appoint such advisory, audit, regulatory 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 Corporation 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 by Cabinet for such purposes.

(4) Subject to the other provisions of this Act and to any directions given to it by the Board, a committee may regulate its procedure in such manner as it thinks fit.

16. Delegation of powers – (1) The Board may delegate to any of its committees, or to the Chief Executive Officer, or to any other officer of the Corporation any of its powers under this Act, including this power of delegation.

(2) Subject to any general or special directions given by the Board, a 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) A committee or person purporting to act under a delegation under this section is presumed, until the contrary is proved, to be acting in accordance with the terms of the delegation.

(4) Each delegation is revocable at will, and no delegation prevents the exercise of a power by the Board itself.

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

17. No gifts or advantages to be accepted by directors or officers – No director or an officer or employee of the Corporation may accept a gift or advantage for himself or herself, or for a 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 devotion to functions, duties or responsibilities under this Act.

PART 4
STAFFING PROVISIONS

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

- (a) for such period as may be specified in the appointment, which may not exceed 3 years; and
- (b) on such other terms and conditions as are approved by Cabinet or the Board.

(2) The Chief Executive Officer is the administrative head of the Corporation, and shall be responsible to the Board for the effective and efficient management of the Corporation, and for the execution of the Corporation's functions.

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

(4) In carrying out his or her duties, the Chief Executive Officer shall follow any general or special directions given by the Board.

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

(6) All remuneration and other allowances and expenses payable to the Chief Executive Officer shall be in accordance with any approved policy of Cabinet, and shall be paid out of the funds of the Corporation.

(7) The Chief Executive Officer shall not engage in any other business or occupation without the prior written consent of the Board.

19. Acting Chief Executive Officer – (1) The Board may, on such terms and conditions as it specifies, appoint a suitable person to be the Acting Chief Executive Officer of the Corporation during a temporary vacancy in the office of Chief Executive Officer, or while the Chief Executive Officer is for any reason unable to carry out the duties of the office.

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

20. Corporation staff – (1) The Corporation may appoint such other officers and employees of the Corporation as it may consider necessary for the purposes of carrying out of the Corporation's functions.

(2) Officers may be engaged under contract for fixed periods or appointed to hold office in accordance with policies of employment and terms and conditions approved by the Board, which are equivalent to those offered to employees of similar Government financial institutions.

(3) The Corporation may make personal loans or advances to its officers and employees for housing and domestic purposes in accordance with a policy approved by the Board, which shall:

- (a) ensure that the entitlements of staff are not less than those enjoyed by employees of other Government owned financial institutions; and
- (b) be adequate to encourage the recruitment and retention of suitably qualified and experienced staff to the Corporation.

21. Other staffing provisions – (1) The Board may approve other staff entitlements and incentives for the purposes of attracting and retaining experienced officers, and such incentives may include the following:

- (a) bonus schemes based upon performance;
- (b) pension or retirement entitlements;
- (c) subsidised interest on loans provided to officers of the Corporation, which may be extended beyond the employment of an officer who has rendered proper service to the Corporation for an extended period determined by the Board.

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

PART 5

CAPITAL AND FUNDS OF THE CORPORATION

22. Capital of the Corporation – (1) The capital of the Corporation is the amount of approved capital as at the commencement of this Act.

(2) The Board may, by resolution, recommend to the Minister for Public Enterprises that the share capital of the Corporation be increased.

(3) In any such case, the Cabinet may authorise the increase of the share capital of the Corporation to such amount as the Cabinet determines.

(4) The share capital of the Corporation shall not be increased except in accordance with subsections (2) and (3).

(5) The provisions of this Act relating to the capital and funds of the Corporation shall apply despite the Companies Act 2001 and any other applicable law to the contrary.

23. Saving of existing arrangements – (1) For the purposes of section 22, the approved capital of the Corporation is taken to include:

- (a) all amounts previously paid to the Corporation by the Government by way of subscription to the capital of the Corporation; and
- (b) the amount assessed under section 24(3) of the Housing Corporation Act 1989 to be equal to the preliminary expenses paid by the Government for the establishment of the Corporation; and
- (c) the value of all assets (including Government land) previously vested in the Corporation by the Government under section 24(5) of the Housing Corporation Act 1989.

(2) Where any doubt exists as to the amount of capital which is deemed to have been contributed by the Government in accordance with subsection (1), the Minister may determine the amount or amounts, after receiving advice to this effect from the Chief Executive Officer of the Ministry of Finance, and the determination is final.

24. Shares to be held by the Government – (1) All shares of the Corporation shall be held by the Government, or on behalf of the Government in accordance with any law.

(2) Shares of the Corporation may only be transferred in accordance with any law making provision for the corporatisation or privatisation of the Corporation.

(3) The transfer of a share that is not in accordance with subsection (2) is void.

25. Corporation may issue securities – (1) Subject to the provisions of this section, and after consultation with the Central Bank of Samoa, the Corporation may with the prior approval of Cabinet, issue securities at such rate of interest and on such other terms and conditions as it thinks fit, for the purpose of providing funds for carrying on its business under this Act.

(2) All securities issued by the Corporation shall constitute a floating charge on all the assets of the Corporation, and the security created by such charge shall be available *paripassu* for all holders of such securities without priority or preference among themselves, and without regard to the respective dates on which such securities were issued.

(3) Securities issued by the Corporation shall be for such term, not exceeding 30 years, as the Board may in any case determine.

(4) The Corporation may purchase any of its securities and shall immediately cancel them.

(5) The provisions of the Securities Act 2006 apply to any securities issued by the Corporation in accordance with this section.

26. Securities issued by the Corporation to be guaranteed by the Government – (1) All securities of the Corporation issued under section 25 are declared to be guaranteed under subsections (2) and (3).

(2) If a default is made by the Corporation in the payment of a principal or interest payable by it in respect of any securities referred to in subsection (1), such principal or interest, as the case may be, shall be paid by the Government out of the Treasury Fund within 3 months of their due dates without further appropriation than this section.

(3) All money paid by the Government under the authority of this section on account of any bonds, stock, or other securities shall constitute a debt due by the Corporation to the Government, and shall be recoverable accordingly.

27. Investments in securities issued by the Corporation – Any money which by virtue of an Act or other authority may lawfully be invested in Government securities may be lawfully

invested in any securities issued by the Corporation and guaranteed in terms of section 26.

28. Other powers to borrow – For the effective performance of its functions and the carrying on of its business the Corporation in addition to the powers set out elsewhere in this Act shall have the power to borrow from the Government or a Bank or other Financial Institution in Samoa, and may give security for any money so borrowed.

29. General Reserve and other funds – The Corporation may establish and maintain a General Reserve Fund and such other funds or accounts to which shall be credited:

- (a) interest on money for the time being credited to that fund or account; and
- (b) any surplus profits of the Corporation that are credited to such fund or account under section 31.

30. Corporation to maintain approved securities – The Corporation shall at all times keep invested in approved securities such amount as the Board determines, being not less in the aggregate than the amount for the time being credited to the General Reserve Fund.

31. Distribution of Profits – After such provisions as the Corporation thinks proper has been made for the depreciation of securities or other assets and for such other matters as in its opinion are necessary for the efficient conduct of the business of the Corporation, the surplus for each financial year shall be paid into the Treasury Fund unless the Minister authorises the Corporation to credit it wholly or partly:

- (a) in redemption of non-interest bearing Government securities owned by the Corporation; or
- (b) in payment by the Government by way of subscription to the authorised capital of the Corporation; or
- (c) to the General Reserve Fund of the Corporation; or
- (d) to any other fund or account.

32. Transfer of Government property and securities to the Corporation – (1) The Government may cause to be transferred

to the ownership of the Corporation any government land (with or without buildings thereon), and any other government property, and the value of any such land or property may, at the option of the Government, be deemed to be a payment by the Government on account of subscription to the capital of the Corporation.

(2) The Minister shall cause to be transferred to the ownership of the Corporation non-interest bearing securities issued by the Government for such an amount as is necessary for the purpose of preserving the paid up capital from any impairment whenever in the opinion of the Corporation the assets of the Corporation are less than the sum of its liabilities and paid up capital.

PART 6

LOANS BY THE CORPORATION

33. Securities from borrowers – (1) Money lent by the Corporation shall be secured on mortgage or by such other security, and in such manner and on such terms, as the Board determines.

(2) Subject to subsections (3) and (4), the Board shall fix the rates of interest to be paid on money lent by the Corporation so as to make adequate provision to cover the costs of administration of the Corporation and to comply with any other legal obligation applying to the Corporation, and an applicable policy of the Government.

(3) When fixing interest rates under subsection (2), the Board shall take into account a policy or determination of the Central Bank of Samoa.

(4) The Board shall also comply with any government policy concerning the cost of finance and the availability of loan financing, but where the application of such a policy involves an operational loss to the Corporation, then the loss incurred shall be regarded as a community service obligation performed by the Corporation in accordance with section 9 of the Public Bodies (Performance and Accountability) Act 2001.

(5) Different rates of interest may be fixed under subsection (2) in respect of different securities or different classes of security, or different portions of the same loan.

(6) The Corporation shall determine the value and acceptability of a security for lending purposes.

34. Mortgages of leasehold interests – (1) Where a registered leasehold interest in land is subject to a mortgage under which the Corporation is the mortgagee, the mortgage is taken to extend to and include the mortgagor's interest in any registered lease that may be granted to him in renewal of the mortgaged lease, or otherwise in place of the mortgaged lease.

(2) In this section:

“mortgage” includes a charge of a legal nature over the land;

“registered” means registered under a law which provides for the registration of an interest in land which is lawfully subject to encumbrance by way of mortgage.

35. Powers in relation to recovery of monies owed by borrowers – The Board may approve policies applying to the recovery of monies owed to the Corporation which include powers of designated officers of the Corporation to:

- (a) compromise with debtors, including guarantors of loans provided to customers of the Corporation, in order to facilitate prompt payment of loans in default; and
- (b) suspend or discount interest applying to certain loans in arrears in order to preserve the integrity of the Corporation's accounts, or to facilitate appropriate compromise with debtors or guarantors; and
- (c) enter into arrangements with debtors and guarantors for the periodic payment of arrears, and for such arrangements to be confirmed by court orders obtained by consent.

PART 7

FINANCIAL MANAGEMENT, INQUIRIES ETC

36. Audit Committee and Risk Management Committee –

(1) An Audit Committee shall be established by the Board, and its membership may include 1 or more qualified persons who are not directors of the Corporation.

(2) The functions of the Audit Committee are:

- (a) to undertake or oversee all aspects of the internal audit of the Corporation's operations, management and financial procedures; and

- (b) to assess the extent of compliance by the Corporation with the applicable prudential guidelines and other supervisory requirements of the Central Bank of Samoa, and to report to the Board on any failure by the Corporation to achieve such compliance; and
 - (c) to ensure that the Corporation complies with accepted best practice of corporate management and reporting, and to report to the Board on any failure by the Corporation to achieve such compliance; and
 - (d) to assess any proposal by the management of the Corporation to recommend the writing off of any debt owed to the Corporation, 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 comprised:
- (a) such number of directors as the Board determines; and
 - (b) the Chief Executive Officer; and
 - (c) the internal auditor, or in the absence of an internal auditor – an officer of the Corporation with responsibilities for its financial management; and
 - (d) the Corporation’s internal lawyer, or in the absence of an internal lawyer – an officer of the Corporation with responsibilities for debt recovery; and
 - (e) any other appropriately qualified persons who are not a director or employee of the Corporation, 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 Corporation; and
 - (b) to develop policies of risk management for the Corporation’s operations and management; and
 - (c) to oversee and report on a matter associated with the identified risks, and the application of the risk management policies; and

- (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 Corporation; and
- (e) to review any matter associated with the recovery by the Corporation of monies owed to it through the sale of a land or other property held as security, and any other process which the committee considers to constitute some risk to the proper management of the Corporation's debt recovery procedures.

37. Inquiries into malpractice – (1) For the purposes of conducting an audit or investigation in relation to any functions provided for in section 36, the Audit Committee and the Risk Management Committee has the powers and protections applying to a Commission of Inquiry under the Commissions of Inquiry Act 1964, including:

- (a) protections under sections 5 and 9 of that Act; and
- (b) powers as provided by section 6 of that Act; and
- (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 summons witnesses and require the production of documents.

(2) A person who, after being summoned to attend before the Audit Committee or the Risk Management Committee, or to produce to the Corporation any books, papers, writings, or documents:

- (a) fails to appear according to the terms of the summons; or
- (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 any default to a fine not exceeding 50 penalty units.

38. Protection of informants – No action may be taken to

affect the employment within the Corporation, or the status of an officer of the Corporation, who:

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

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

40. Accounts, audit, and annual report – (1) The Corporation shall:

- (a) keep full and proper accounts and other records of its operations at all times; 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 Corporation 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 Corporation shall be audited each year by the Auditor.

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

- (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 Corporation, together with a copy of the Auditor's report on the accounts, shall be laid before the Legislative Assembly by the Minister for Public Enterprises as soon as practicable after the Minister for Public Enterprises has received them.

(5) The Chief Executive Officer and the chief financial officer of the Corporation 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 Corporation; and
- (b) the accounts and reports accurately reflect the financial affairs of the Corporation, and the accounts maintained by the Corporation; and
- (c) adequate procedures of internal control have been applied by the management of the Corporation.

41. Powers of the Auditor – (1) The Auditor, or a person authorised to act by the Auditor, is entitled at all reasonable times:

- (a) to have full and free access to all accounts, papers, records and other documents relating to the activities of the Corporation; and
- (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 a person, for the purpose of carrying out duties in accordance with section 40.

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

42. Director's responsibilities in relation to accounts and reports – All directors shall sign off on the accounts of the Corporation and the report prepared by or on behalf of the Corporation in accordance with section 40.

43. Write-offs – (1) The writing-off of a debt due to the Corporation shall be in accordance with:

- (a) the requirements of section 120 of the Public Finance Management Act 2001; and
- (b) the requirements of an applicable prudential guidelines and other requirements imposed by the Central Bank of Samoa; and
- (c) best corporate management and accounting practice; and

- (d) the procedures under subsection (2).
- (2) No debt owed to the Corporation 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) This section does not apply to a decision to suspend or write-off the interest component of a loan which is in arrears, if such a decision has been made under section 35 or in accordance with a policy approved by the Board.

PART 8

OBLIGATIONS OF DIRECTORS

44. Obligations of Directors – (1) All directors of the Corporation shall prepare and submit annual disclosure statements to the Chairperson in a form and manner required by the Ministry of Finance.

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

- (a) the remuneration received by the director from the Corporation during the year to which the statement applies; and
- (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; and
- (c) the reasons for failing to attend a Board or Committee meeting; and
- (d) all disclosures made by the director of a conflict of interest during the year to which the statement applies; and
- (e) all loans from the Corporation held by—
 - (i) the director; and
 - (ii) a company in which the director holds shares, a directorship or employment of any nature; and
 - (iii) a spouse, parent or child of the director;

- (f) any arrears in the repayment of all loans referred to in paragraph (e) during the year to which the statement applies; and
 - (g) any other position held by the director which may give rise to a potential conflict of interest; and
 - (h) 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 is taken to be suspended from office if he or she fails to comply with the requirements of subsection (1).
- (4) Subject to subsection (4), 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 Corporation.
- (5) The information provided in statements submitted under this section shall be kept confidential in accordance with the requirements of the Public Finance Management Act 2001 or as stipulated by the Minister of Finance.

45. Directors with loans in arrears – (1) A director is deemed to be suspended from office if a loan that the director has obtained from the Corporation, or which a director has guaranteed for a customer of the Corporation, falls into arrears in accordance with the Corporation's usual terms for payment of the loan.

(2) Subsection (1) applies:

- (a) even if the loan was obtained at any time before the director was appointed to that office; and
 - (b) if the loan in arrears has been made to a company in which the director is a shareholder or director.
- (3) This section applies to a loan from the Corporation to a spouse or child of a director.

PART 9

MODIFICATION OF THE APPLICATION OF CERTAIN LAWS

46. Application of the Public Bodies (Performance and Accountability) Act 2001 to the Corporation – (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 Corporation if Cabinet determines that the Corporation is to be the subject of a major re-organisation or is to be prepared for privatisation.

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

(3) Subject to section 47 of this Act, 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 applies to the Corporation 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 implementation of a Government policy by the Corporation which involves the provision of finance at designated interest rates or to designated eligible borrowers which affect the profitability of the Corporation is taken to be a community service obligation performed by the Corporation.

47. Application of the Companies Act 2001 to the Corporation – (1) Despite the provisions of the Public Bodies (Performance and Accountability) Act 2001, the only provisions of the Companies Act 2001 which apply to the Corporation and its directors prior to a determination being made under section 46(1) are:

- (a) the application of the solvency test to the payment of dividends in accordance with section 28 of the Companies Act 2001; and
- (b) the fundamental duties of directors under section 65 of the Companies Act 2001; and
- (c) the use and disclosure of information by directors as provided for in section 69 of the Companies Act 2001; and
- (d) the standard of care of duties under section 70 of the Companies Act 2001; and
- (e) indemnities and insurance for directors as provided for in sections 74 and 75 of the Companies Act 2001; and

- (f) disqualifications of directors and managers as provided for in sections 77, 78 and 82 of the Companies Act 2001; and
 - (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 a direction given under section 7 of this Act, or any other act or decision of the Minister or the Cabinet communicated to the Corporation in accordance with this Act.

PART 10

MISCELLANEOUS PROVISIONS

48. Indemnities for directors and employees – No director, officer of the Corporation or person appointed to a committee of the Corporation is personally liable for an act done or omitted to be done in good faith in the performance of the functions of the Corporation or of a committee of the Corporation, or the exercise of a lawful power in relation to such functions.

49. Confidentiality of financial information – (1) Subject to subsections (2) to (4), the Corporation shall make arrangements for keeping the financial affairs of its customers confidential.

(2) The Corporation shall only provide information relating to the financial affairs of its customers if it is required to do so under an order of a court of competent jurisdiction, or under a law which requires that such information be provided for the purposes of suppressing criminal activity.

(3) Subsection (2) does not apply to the provision of information by the Corporation for the purpose of recovering debts owed to it.

(4) This section does not affect the obligations of the Corporation to make available information that is on the public record, or that is required to be provided in accordance with any law.

50. Prohibition of procuration fees – (1) Subject to subsection (2), a person shall not demand, charge, recover, or receive a procuration fee for a loan from the Corporation.

(2) Subsection (1) does not affect the power of the Corporation to enter into a partnership or agency arrangement for the purposes of carrying out its functions, and for making arrangements for fees to be paid to agents or partners.

51. Exemption from income tax – The income of the Corporation shall be wholly exempted from income tax.

52. Use of Approved Forms – The Chief Executive Officer may approve forms of mortgage or other securities given in favour of the Corporation, and any other forms to be used for a purpose contemplated by this Act.

53. Regulations – The Head of State, acting on the advice of Cabinet may 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.

54. Repeal – The Housing Corporation Act 1989 is repealed.

55. Savings and Transitional Provisions – (1) The directors of the Corporation holding office at the time of commencement of this Act 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 3.

(2) The Manager of the Corporation holding office at the time of commencement of this Act continues to hold office as Chief Executive Officer as if appointed under this Act.

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

(4) All contracts which were lawfully made by the Corporation prior to the commencement of this Act are taken to have been lawfully made under section 14.

This is the official version of this Act as at 31 December 2017.

This Act has been revised by the Legislative Drafting Division from 2010 - 2017 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General:
 - (i) “Every” and “any” changed to “a” or “each” where appropriate
 - (ii) Present tense drafting style where appropriate:
 - “shall be” and “has been” changed to “is/are”
 - “shall be deemed” changed to “is/are taken”
 - “shall have” changed to “has”
 - “at any time” removed
 - (iii) Removal/replacement of obsolete and archaic terms with plain language
 - “notwithstanding” changed to “despite” or “even if”
 - “pursuant to” or “in accordance with the provisions of” changed to “under”
 - (iv) Numbers in words changed to figures
 - (v) Removal of superfluous terms
 - “the generality of”
 - “provided for”
 - “the provisions of”
 - (vi) Adopting drafting style to put “and” or “or” at the end of each paragraph
 - (vii) “etc.” deleted and replaced with complete sentences
 - (viii) “Repeal of the Housing Act 1989” changed to “Repeal”
 - (ix) Arrangement of provisions made consistent with the text
 - (x) Section 5(1) and (2) paragraphed.
 - (xi) Roman numerals changed to numbers

The following amendments were made to this Act since the publication of the Consolidated and Revised Statutes of Samoa 2007:

By the *Public Bodies (Performance and Accountability) Amendment Act 2015*, commenced on 25 April 2014, and as such has retrospective effect:

sections 7, 22(2), 40(3) & (4) after “Minister” insert “for Public Enterprises”.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Samoa Housing Corporation.*
