



SAMOA

**LEASING AND LICENSING OF CUSTOMARY LAND
ACT 1965**

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**LEASING AND LICENSING OF CUSTOMARY LAND
ACT 1965**

1965

No.24

2 *Leasing and Licensing of Customary Land Act 1965*

AN ACT to provide for the leasing and licensing of customary land for certain purposes.

[Assent and commencement date: 15 October 1965]

**PART 1
PRELIMINARY**

1. Short title – This Act may be cited as the Leasing and Licensing of Customary Land Act 1965.

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

“Act” includes Ordinance;

“agricultural purpose” includes horticulture and fisheries (but not fish canning);

“authorised purpose” means a public, hotel, industrial, commercial, business or religious purpose;

“beneficial customary land owner”:

(a) in relation to any customary land or any interest therein, includes any Samoan who is entitled in equity to occupy the same or to share in the occupation thereof or to have the income therefrom or a share in that income paid to or held in trust for him or her, or who is entitled in equity to any such benefit contingently or in reversion; and

(b) does not include any Samoan who holds any such land or interest only by way of trust, mortgage or charge;

“business purpose” includes an agricultural and a pastoral business purpose;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry responsible for lands, who is also the Registrar of Land.;

“Constitution” means the Constitution of Samoa;

“Court” and “Land and Titles Court” means the Land and Titles Court referred to in Article 103 of the Constitution;

“customary land” has the same meaning as in Article 101 of the Constitution;

“forest produce”; (*repealed by Forestry Management Act 2011, No.3*)

“forestry”; (*repealed by Forestry Management Act 2011, No.3*)

“Government” means the Government of Samoa;

“hotel” means a residential building which is designed and intended to be used for providing board and lodging for reward for 6 or more persons, whether or not it is designed and intended to be used also for the sale of liquor;

“industrial purpose”:

- (a) includes manufacturing and processing; but
- (b) does not include wholesale or retail trade, a commercial, agricultural, or pastoral purpose, a mine, a quarry, a construction business or the provision of services;;

“manufacturing or processing” includes:

- (a) manufacturing or processing or both of food, beverages, tobacco, textiles, textile goods, wearing apparel, footwear, leather, leather products, furniture, fixtures, wood and cork products, paper and paper products, printing, publishing, rubber products, chemicals and chemical products, petroleum and coal products, metallic and non-metallic mineral products, electrical machinery, apparatus, appliances and supplies, transport equipment and other machinery and metal products;
- (b) generation, transformation and distribution of electrical energy, gas or steam for trade or sale;
- (c) provision of water or sanitary works;
- (d) an abattoir within the meaning of section 41 of the Health Ordinance 1959;
- (e) a bakery within the meaning of section 41 of the Health Ordinance 1959;
- (f) the business of pasteurising milk carried on for trade or sale otherwise than on a farm or plantation;
- (g) an offensive trade within the meaning of section 2 of the Health Amendment Act 1965 carried on for trade or sale; and
- (h) any other industry in which 3 or more persons are engaged or employed in manufacturing or processing and packing raw materials or goods for trade or sale, whether by means of electrical

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energy, gas, steam or any mechanical power or appliance or not;

“Minister” means the Minister responsible for lands;

“public purpose” has the same meaning as in the Taking of Land Act 1964;

“Registrar” means the Registrar of the Court, and includes a Deputy Registrar;

“Samoan” means a person who is a citizen of Samoa, and has any Samoan blood;

“Savali” means the official newspaper published by the Government;

“Samoa” means the Independent State of Samoa.

(For eligibility to hold a Matai title, see section. 6 of the Samoan Status Act 1963 and the Land and Titles Act 2020.

For definition, duties and registration of Matai’s, see the Land and Titles Act 2020.

For the Land and Titles Court, see Part IX of the Constitution and the Land and Titles Act 2020: this Court decides disputes in respect of customary land and Matai titles.

The Commission set up under the Land Titles Investigation Act 1966 has no authority to make any determination or order as to the ownership or control of customary land; see section 20 of that Act.)

PART 2
LEASING AND LICENSING

3. Repealed by the Leasing and Licensing of Customary Amendment Act 2019, No.27.

4. Power to grant lease or licence – (1) Subject to section 3, the Minister, if in his or her opinion the grant of a lease or licence of any customary land or any interest therein is in accordance with Samoan custom and usage, the desires and interests of the beneficial customary land owners of the land or interest therein and the public interest, may grant a lease or licence of that customary land or interest therein as trustee for such owners:

- (a) for an authorised purpose approved by the Minister;
- (b) if the authorised purpose so approved is a hotel or industrial purpose, for a term not exceeding 30

years, with or without a right or rights of renewal for a term or terms not exceeding an additional 30 years in the aggregate, as may be approved by the Minister;

- (c) if the authorised purpose so approved is not a hotel or industrial purpose, for a term not exceeding 20 years with or without a right or rights of renewal for a term or terms not exceeding an additional 20 years in the aggregate, as may be approved by the Minister;
- (d) for such rent or other consideration payable to the Chief Executive Officer, reviewable or not, and if reviewable at such intervals or on such occasions and in such way, as may be approved by the Minister; and
- (e) subject to such other covenants, conditions and stipulations as may be approved by the Minister.

(Proviso repealed by Forestry Management Act 2011, No.3)

(1A) Despite that the lease or licence is approved by the Minister as trustee for beneficial customary landowners under subsection (1), the beneficial customary landowners have the following rights in relation to such lease or licence granted:

- (a) the right to approve or disallow the use of the leasehold interest as security;
- (b) the right to approve or disallow the assignment of the lease or licence whether as a result of a default by mortgagor or not;
- (c) the right to receive payments in accordance with the terms of the lease or licence;
- (d) the right to approve or disallow a sub-lease;
- (e) the right to initiate and enforce a review of rents as provided for by the terms of the lease;
- (f) the right to enforce beneficial covenants under the terms of the lease or licence, including obligations of the lessee or licensee to –
 - (i) provide employment, to assist in business development; or
 - (ii) to provide community services or infrastructure; and

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- (iii) the right to enforce environmental protection obligations applying to the lessee or licensee under the terms of the lease or licence; and
 - (g) the right to seek legal representation to undertake legal proceedings on matters arising from the lease or licence granted.
- (2) For the avoidance of doubt, an interest in the lease or licence of customary land that the Minister can grant by subsection (1) includes a mortgage of the interest of the lessee or licensee.
- (3) The process of registration and discharge of such mortgages is set out in the Regulations made pursuant to this Act.
- (4) Nothing in this Act may be construed or implied:
- (a) to permit the alienation or disposition of customary land in a manner prohibited by Article 102 of the Constitution; or
 - (b) to permit or deem ownership in any customary land to vest in a person otherwise than as determined under any law dealing with the title to customary land.

*(As to the Public Trustee, see the note to section 3.
As to wills of customary land, see the definition of real estate in section 2 of the Wills Act 1975.)*

5. Application to grant lease or licence – Wherever any Samoan claiming to be a beneficial customary landowner of any customary land or of any interest therein desires that the Minister shall grant a lease or licence of such land or of any interest therein under the powers conferred by section 4, the Samoan shall make written application in that behalf to the Chief Executive Officer.

5A. Access by licence - (1) For a licence granted under section 5 on the following terms:

- (a) the term does not exceed 1 year;
- (b) the customary ownership of the land has been determined by the Land and Titles Court; and
- (c) the beneficial customary land owners have signed the licence,

the beneficial customary land owners of that licence, have the authority to grant reasonable access to and use of their customary land.

6. Form of application – (1) An application under section 5 or section 5A shall propose a beneficial customary landowner or beneficial customary landowners of the customary land or interest therein desired to be leased or licensed as the agent or agents of all beneficial customary landowners, to whom the Chief Executive Officer or the Chief Executive Officer of the Ministry of Finance may account for the rent or consideration to be derived from the lease or licence of that land or interest.

(1A) An application under section 5 shall also state the full names, occupation and address of the proposed lessee or licensee, and what the applicant and the proposed lessee or licensee propose as to:

- (a) whether a lease or a licence is to be entered into;
- (b) the authorised purpose of the lease or licence;
- (c) the term of the lease or licence, and of any right of renewal thereof;
- (d) the rent or other consideration, when it is to be paid, and any rights of review thereof; and
- (e) any other covenants, conditions and stipulations.

(2) An application under section 5 shall otherwise be in such form and give such information as the Chief Executive Officer may prescribe.

7. Requiring survey – If the application does not, in the opinion of the Chief Executive Officer, sufficiently describe the land or interest desired to be leased or licensed the Chief Executive Officer may require the applicant to provide or pay for a survey of such land or interest, and may refuse to proceed further until such survey has been provided, or paid for by the applicant and made by the Chief Executive Officer.

8. Publishing of application–(1) Except as provided in subsection (3), the Chief Executive Officer shall publish in the Savali or any newspaper or television and other forms of advertising determined by the Chief Executive Officer the main

particulars of each application received by him or her under section 5, including the names of the proposed agent or agents.

(2) With each such publication of particulars of an application, the Chief Executive Officer shall publish in the Savali or any newspaper or television and other forms of advertising determined by the Chief Executive Officer; a notice fixing a date or period, not being less than 6 months from the date of the publication, not later than or within which, and a place at which, written objections to the proposed leasing or licensing or to the proposed agent or agents may be lodged with the Registrar by any Samoan who claims that he or she would be affected thereby.

(2A) The Chief Executive Officer may extend the period under subsection (2) if the Chief Executive Officer considers that further time is warranted for a particular application.

(3) Subsections (1) and (2) do not apply:

(a) if the Samoan who makes the application under section 5 and the proposed agent or agents are held by the Land and Titles Court to be beneficial customary landowners of the customary land or interest therein in respect of which the application is made:

PROVIDED THAT a copy of such determination by the Land and Titles Court is provided to the Chief Executive Officer; or

(b) if—

- (i) the application under section 5 is a second or subsequent application; and
- (ii) particulars of the first application have been duly published under this section ; and
- (iii) the beneficial customary landowner making such second or subsequent application is the same person as the beneficial customary land owner who made such first application; and
- (iv) each application proposes the same agent or agents.

9. Disposal of objections – The Registrar shall, as soon as convenient after receiving any objection, prepare, sign and file a petition to the Land and Titles Court for the purpose of having

that objection heard and disposed of, and send a copy of the objection to the Chief Executive Officer, and another copy to the applicant.

9A. Register of customary land lease or licence or interest therein - (1) The Registrar must establish and maintain a register for the registration of customary land leases or customary land licences and interest therein.

(2) The registration by the Registrar of customary land leases or customary land licences and interest therein onto the Register established in subsection (1) does not:

- (a) permit the alienation of customary land in a manner prohibited by Article 102 of the Constitution; or
- (b) permit or deem ownership on any customary land to be vested in any person.

10. Preparation and completion of lease or licence – (1) Within 1 year of the date when all objections to the application have been disposed of, or when the date or the period not later than or within which objections may be lodged has expired without any objection being lodged, and when the Chief Executive Officer has informed the applicant that the Minister is of the opinion as required by section 4, whichever later occurs:

- (a) the applicant shall have a draft of the lease or licence complying with the Minister's approvals under section 4 prepared by his or her solicitor at the cost of the proposed lessee or licensee, and submitted to the proposed lessee or licensee and the Chief Executive Officer for perusal;
- (b) when the draft has been approved by the applicant, the proposed lessee or licensee and the Chief Executive Officer, the applicant shall have 1 original and 2 carbon copies typed and submitted first to the proposed lessee or licensee, and after execution by him or her to the Chief Executive Officer for execution by the Minister; and
- (c) the applicant shall then register the lease or licence with the Registrar of Land.

(2) On written application being made to the Minister before or after the expiration of that period of 1 year, and on proof to the

satisfaction of the Minister that the action required by subsection (1) has not been or cannot be completed within that period because of some reasonable cause, the Minister may extend that period.

11. Payment of rent or other consideration – (1) Every such lease or licence shall operate as if it was a lease or licence as the case may be of public land, but the rent or other consideration derived therefrom shall be received by the Chief Executive Officer in trust for the beneficial customary land owners of the land or interest therein as the case may be.

(2) Repealed by the Leasing and Licensing of Customary Land Amendment Act 2019, No .27.

(3) The Public Finance Management Act 2001 applies to such rent or other consideration received by the Chief Executive Officer, except that no charge for the Financial Secretary's services shall be deducted.

(4) The Chief Executive Officer or the Chief Executive Officer of the Ministry of Finance may account as statutory expenditure for such rent or other consideration, plus any amount of interest certified by the Chief Executive Officer of the Ministry of Finance to have been earned thereon, and less any unpaid fees and commission payable to the Chief Executive Officer in the matter, to the agent or agents of the beneficial customary land owners.

(5) Neither the Chief Executive Officer nor the Chief Executive Officer of the Ministry of Finance nor the Government is liable to pay any rent or other consideration or damage to any person who claims that he or she is a beneficial customary land owner of the land or interest from which that rent or other consideration arose and has not received his or her share thereof from the agent or agents but nothing in this Act prevents any such person prosecuting a claim for his or her share against the agent or agents.

(As to subsection (1) and the term "public land", see Articles 101 (1) and (4), and 123 (2) of the Constitution; and as to leases or licences thereof, see the Land Ordinances 1959.)

12. Fees and commission – The Chief Executive Officer shall receive and take on behalf of the Ministry of Finance such

fees and commission for or in respect of any act, matter or thing done by him or her under this Act as are specified in Schedule 1.

13. Prepayment of fees – Subject to section 14, all fees payable under this Act and specified in Schedule 1 shall be prepaid in cash by the proposed lessee or licensee, and the Chief Executive Officer may refuse to accept any application or objection or to take any action thereon unless the fees have first been paid.

14. Dispensing with fees or commission – If it appears to the Minister that any person is unable, or ought not to be called upon, to pay or bear any fee or commission specified in the First Schedule, the Minister may dispense with the payment or taking thereof in whole or in part or may authorise a refund thereof in whole or in part out of the Treasury Fund as statutory expenditure, subject in any case to such terms as the Minister thinks fit.

15. Land and Titles Court fees – Fees shall be charged for all matters coming before the Land and Titles Court under this Act at the rates and in the amounts specified in Schedule 2 to the Samoan Land and Titles Protection Ordinance 1934, as substituted by section 2 of the Samoan Land and Titles Protection Amendment Act 1968.

(Section 2 of the Samoan Land and Titles Protection Amendment Act 1968, being the corresponding enactment in force at the date of this consolidation, has been substituted for the repealed section 7 of the Samoan Land and Titles Protection Amendment Ordinance, 1957)

16. Powers to recover rents - (1) The right to recover rents and other sums due under a lease or licence in accordance with any law or legal process is exercisable by the Minister, acting on behalf of the beneficial customary landowners.

(2) The beneficial customary landowners also have power to commence and undertake legal proceedings for the recovery of rents and other monies due under a lease or licence granted under this Act, even if the lease or licence has been made on their behalf by the Minister.

(3) When taking action under subsection (2), the beneficial customary landowners (or their legal representative) have the

right to commence and undertake the proceedings, and any proceedings to execute any order or judgement made in their favour, without the consent or involvement of the Minister.

17. Surrenders – The Minister, if in his or her opinion the surrender of any lease or licence of customary land or any interest therein granted under this Part is in accordance with the desires and interests of the beneficial customary landowners of that land or that interest as the case may be, may accept that surrender.

18. New lease or licence – Nothing in section 4, on or before the surrender or the expiration of the term or last renewed term of a lease or licence, prevents the granting of a new lease or licence to the lessee or licensee under the expired lease or licence of the land or interest affected thereby, with or without any additional land or interest, subject to compliance by all parties with this Act.

PART 3
PROVISIONS APPLICABLE TO MORTGAGES OF
LEASES OVER CUSTOMARY LAND

19. Mortgages of leases of customary lands (1) If a lease of customary land is to be mortgaged, the mortgage:

- (a) must not be created, except with the prior written consent of the beneficial customary landowners of the customary land: and
- (b) must not be created, unless the lessee has made improvements to the customary land leased and such improvements must be made in accordance with the approved purpose under the lease; and
- (c) must be registered under this Act and such registration does not confer a right of ownership over the customary land.

(2) A second or subsequent mortgage on a lease of customary land:

- (a) is prohibited;
- (b) must not be registered; and
- (c) if created or registered, is void.

(3) A mortgagee of a lease on customary land:

- (a) must not take an action over the mortgaged lease unless the action is permitted under this Act or Regulations made pursuant to this Act.
- (b) must first pay any outstanding lease rental payments from any money recovered when exercising the default right under the mortgage.

20. Assignment of leases of customary land subject to mortgage - The lessee of customary land that is subject to a mortgage, must not assign the lease except with the prior written consent of the beneficial customary land owners of the customary land.

20A. Discharge of Mortgage - (1) When a mortgage under this Act is to be discharged, the mortgagee shall execute a discharge in the approved form.

(2) Upon registration of a discharge of mortgage the mortgaged interest shall, to the extent specified in the discharge, cease to be charged with any money secured by the mortgage.

21. Regulations - (1) The Head of State may, acting on the advice of Cabinet, make Regulations to give effect to this Part.

(2) Without limiting the generality of subsection (1), Regulations may be made to provide for the treatment of leases upon default of mortgage.

22. Acts not to apply: None of the following Acts apply to customary land leases, customary land licences or interest therein:

- (a) Land Titles Registration Act 2008; and
- (b) Property Law Act 1952.

23. Savings and transitional - (1) At the commencement of the Leasing and Licensing of Customary Land Amendment Act 2019, any existing signed lease, licence, sub-lease, sub-licence or assignment made under this Act continue and is considered validly made.

(2) The Leasing and Licensing of Customary Land Amendment Act 2019 does not apply to any lease, licence, sub-lease, sub-licence, assignment or securities created before the

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commencement of the Leasing and Licensing of Customary Land Amendment Act 2019.

24. Repeal - The enactments specified in Schedule 2 are repealed.

SCHEDULES

SCHEDULE 1
(Sections 9(8), 12 and 13)

Item	Nature of Fee or Commission	Amount \$
1.	Application to grant lease or licence including advertisement in the Savali and execution.	5.00
2.	Perusal of draft lease or licence	2.10
3.	Objection to application to grant lease or licence or to the proposed agent or agents (to be applied towards fees payable to the Land and Titles Court).	5.00
4.	Commission on rent or other payments of an annual or periodical nature received by the Chief Executive Officer on behalf of a Samoan.	5%
5.	Commission on purchase money or any money not being payments of an annual or periodical nature, received by the Chief Executive Officer on behalf of a Samoan. But the maximum commission in respect of any one transaction shall not exceed \$4.00.	5%

SCHEDULE 2
(Sections 15 and 24)

1. The Samoan Land and Titles Protection Ordinance 1934 No. 2: Parts I, II and III comprising sections 3 to 12 inclusive.

2. The Samoan Land and Titles Protection Amendment (No.2) Ordinance 1937 No. 6: sections 2 and 3.
3. The Samoan Land and Titles Protection Amendment Ordinance 1957 No. 4:
Items 1, 2, 6, 7, 8 and 9 of the Third Schedule.

REVISION NOTES 2008 – 2020/3 March 2021

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

This Act has been revised by the Legislative Drafting Division from 2008 to 2020/3 March 2021 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) 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) “shall be deemed” changed to “is taken”
 - (ii) “from time to time” deleted
 - (iii) “shall have” changed to “has”
 - (iv) Numbers in words changed to figures
 - (v) Corrected reference to empowering provisions for the Schedules.
 - (vi) definition of “industrial purpose” revised.
 - (vii) Heading to Part 1 revised to refer to “PRELIMINARY”
 - (viii) References to “Forest Act 1967” changed in sections 4(1)(e)(i) (Proviso) and 9A(3) to “Forestry Management Act 2011.

The following amendments were made to this Act since its enactment:

By the Forestry Act 2011

Section 2 “forestry” and “forest produce” repealed

Section 4 proviso under subsection (1) (e) repealed

Section 9A repealed

By the Customary Land Advisory Commission Act 2013:

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Section 4 inserted new subsections (2) to (4).

By the Leasing and Licensing of Customary Land Amendment Act 2019

Section 2 For the definition of “beneficial owner” substitute with “beneficial customary landowner”
For the definition of “Chief Executive Officer” substitute with new definition;

Section 3 repealed;

Section 4 New subsection (1A) inserted after subsection (1)
Subsection (3) substituted;

Section 5A New section 5A inserted after section 5;

Section 6 in subsection (1), reference to section 5A was inserted;

Section 8 in subsection (1) and (2), inserted the provision allowing publication in any newspaper or television and other forms of advertising determined by the Chief Executive Officer in addition to publication in the Savali;

in subsection (2), “3 months” is substituted with “6months”;

Section 8(2A) New subsection 8(2A) inserted after subsection 8(2);

Section 8(3) (a) New proviso inserted;

Section 8(3)(b)(ii) substitute “Savali” with “under this section”;

Section 9A New section 9A inserted after section 9;

Section 11(2) repealed;

Section 16 substituted;

Part 3 New Part 3 inserted after section 18;

Section 19 has been renumbered as section 24;

Section 23 this section as per the Amendment Act was

inserted as section 23A, however this has been renumbered as section 23 to correct the sequence of sections.

- Name of Principal Act-** name of the principal Act-“Alienation of Customary Land Act 1965” substituted with “Leasing and Licensing of Customary Land Act 1965”;
- in other enactments, any reference to the Alienation of Customary Land Act 1965 is substituted with “Leasing and Licensing of Customary Land Act 1965”.

*This Act is administered by
the Ministry of Natural Resources and Environment.*