



Western Samoa

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1972, No. 10

**AN ACT to control the alienation of freehold land to persons who are not resident citizens and to overseas corporations.**

[9 August 1972]

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

1. **Short title**—This Act may be cited as the Alienation of Freehold Land Act 1972.

2. **Interpretation**—(1) In this Act, unless the context otherwise requires, —

“Constitution” means the Constitution of Western Samoa:

“Department” means the Department of Lands and Survey:

“Director” means the Director of Lands:

“Freehold land” has the same meaning as in Article 101 of the Constitution.

“Government” means the Government of Western Samoa:

“Minister” means the Minister of Lands:

“Overseas corporation” means a body corporate which—

- (a) Is incorporated outside Western Samoa; or
- (b) Is a company which is a subsidiary of any other company or a body corporate incorporated outside Western Samoa; or
- (c) Is a company in which more than 25 per cent of the shares or of the voting power are in the hands of persons who are not resident citizens:

“Resident citizen” means a citizen of Western Samoa in terms of any citizenship legislation currently in force who is ordinarily resident in Western Samoa.

- (2) For the purposes of this Act, a person shall be deemed to be ordinarily resident in Western Samoa on any date if —
  - (a) He has resided in Western Samoa for not less than 2½ years during the period of 3 years immediately preceding that date; and
  - (b) He intends to continue to reside permanently in Western Samoa.

(3) For the purposes of this Act, where in any transaction there are two or more purchases, then if one of the purchases, being an individual, is not a resident citizen, or being a body corporate, is an overseas corporation, the provisions of this Act shall apply to the transaction.

(4) For the purposes of this Act, where the purchaser in any transaction is a trustee, the provisions of this Act shall apply as if each beneficiary were a purchaser, and where the purchaser is an agent the provisions hereof shall apply as if each principal or nominee were a purchaser.

**3. Administration**—This Act shall be administered by the Director and the Department under the control of the Minister.

**4. Alienations to which this Act applies**—(1) This Act shall apply to every contract or agreement —

- (a) For the sale or transfer of any freehold estate or interest in freehold land, whether legal or equitable;
- (b) For the leasing of any freehold land for a term of more than 20 years;
- (c) For the sale or transfer of any leasehold estate or interest in freehold land, whether legal or equitable, of which more than 20 years is unexpired:

- (d) For the granting of an option to purchase or otherwise acquire any estate or interest in freehold land as aforesaid:

In any case where the purchaser or lessee, —

- (i) Being an individual and not being a trustee is not resident a citizen; or
- (ii) Being a body corporate and not being a trustee, is an overseas corporation; or
- (iii) Is a trustee under a trust any beneficiary of which is not a resident citizen or is an overseas corporation.

(2) Where any lease or any contract or agreement for a lease contains a provision enabling the lease or the contractor agreement for a lease to be renewed for any period or successive periods upon the expiration of the original term thereof, the period or periods for which the lease or contract or agreement may be so renewed shall, for the purposes of this Act, be deemed to be part of the original term thereof.

**5. Alienations exempt from this Act—**(1) Nothing in this Act shall apply with respect to —

- (a) Any alienation entered into before the commencement of this Act, or the exercise of any option granted before the commencement of this Act;
- (b) Any bona fide contract or agreement for alienation of freehold land without any valuable consideration in money or money's worth;
- (c) Any contract or agreement for the transfer of any freehold land or interest therein by way of security only or for the retransfer of property so transferred on the discharge of the security;
- (d) Any contract or agreement for the sale or transfer of any freehold land of interest therein to a trustee for the benefit of the wife or husband or a child or children or a grandchild or grandchildren of the vendor;
- (e) Any contract or agreement for the transfer of any freehold land or interest therein from a trustee to a trustee on the appointment of a new trustee or the retirement of a trustee;

- (f) Any contract or agreement for the transfer by a trustee, executor, or administrator to a beneficiary of any freehold land or interest therein to which the beneficiary is entitled under any trust, will, or intestacy;
  - (g) Any contract or agreement for the sale or transfer of any estate or interest by a trustee, executor, or administrator to a purchaser pursuant to an option given in any trust or will
  - (h) Any contract or agreement for the sale or transfer of any freehold land or interest therein to or by the Government;
  - (i) Any contract or agreement for the sale or transfer of any freehold land or interest therein to or by the Government of any other State;
  - (j) Any transaction of a class for the time being exempted from this Act by regulations made under this Act.
- (2) In subsection (1) of this section the term "transfer" includes a lease.

#### **6. Prohibiting alienations without consent of Head of State**

(1) Where any alienation to which this Act applies is entered into, the transaction shall be deemed to be entered into in contravention of this Act, unless an application for the written consent of the Head of State to the transaction is made in writing to the Minister within 3 months after the date of the transaction or within such further time as may be allowed by the Minister.

(2) No person shall enter into any transaction in contravention of this Act, whether as vendor, purchaser, lessor, lessee, or otherwise, and whether as principal or agent, or procure or induce any other person to enter into any transaction in contravention of this Act.

(3) No person shall be entitled to any commission, reward, or other valuable consideration in respect of any transaction entered into in contravention of this Act.

(4) Where any transaction is entered into in contravention of this Act or where any condition upon or subject to which the Head of State grants his consent to any transaction is not complied with, the transaction shall be deemed to be unlawful and shall have no effect.

(5) Where any transaction is entered into subject to the consent of the Head of State, the transaction shall not have any effect unless the Head of State consents to it and the conditions upon or subject to which the consent is granted are complied with.

(6) The Minister shall not grant an extension of time within which to make application for the consent of the Head of State, unless the Minister is satisfied that the delay in making the application was due to mistake (whether of fact or of law) of the parties or any of them or of any other person or to circumstance beyond the control of the parties or of any of them, and that the delay has not been used for the purpose of contravening the provisions of this Act.

(7) Application for the consent of the Head of State to any transaction to which this Act applies may be made by or on behalf of any party to the transaction.

**7. Granting or refusal of consent**—In granting or refusing his consent to any transaction to which this Act applies, the Head of State shall act on the advice of the Minister, but without prejudice to the provisions of Article 37(4) of the Constitution.

(2) In considering whether to advise the Head of State to grant or refuse his consent to any such transaction, the Minister shall have regard to the following matters:

- (a) The nature of the use to which the purchaser or lessee proposes to devote the land and his ability to achieve that purpose;
- (b) Whether the acquisition would be in or against the public interest, and, whether the intended use of the land will be in the interests of the community generally;
- (c) Whether a refusal of consent would result in substantial hardship to the owner of the land;
- (d) All such other relevant circumstances as shall be brought to his attention by or on behalf of any party to the transaction.

**8. Death of a party to a transaction**—(1) In the event of the death of a party to a transaction in respect of which an application for consent is pending under this Act, the appli-

cation and all proceedings in respect thereof shall ensure and be continued as if it had been made by or in respect of the personal representatives of the deceased.

(2) In the event of the death of a party to a transaction to which the consent of the Head of State has been granted, such consent shall enure as if it had been granted to or in respect of the personal representatives of the deceased person.

**9. Registration of dealings—**(1) Notwithstanding anything in this Act the Registrar of Lands shall not register any dealing to give effect to any contract or agreement specified in section 4 of this Act unless the Head of State has consented in writing to the transaction.

(2) The Registrar may accept as sufficient proof that this Act does not apply to the transaction, a certificate endorsed on the contract or lease or instrument of conveyance and signed by the purchaser or lessee or the solicitor for the purchaser or lessee.

(3) The Registrar may also require such further proof as he considers necessary to satisfy him that this Act does not apply to the transaction.

**10. Regulations—**The Head of State, acting on the advice of Cabinet, may from time to time make all such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof and including the prescribing of procedure for applications for consent under this Act.