

ANNEXURE 6

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GOVERNMENT OF SAMOA


Office of the Attorney General

23 October 2014

Clerk of the Legislative Assembly
Office of the Clerk of the Legislative Assembly
MULINUU

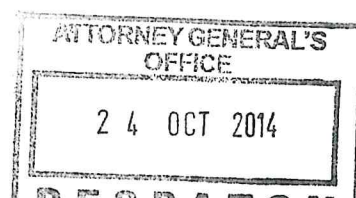
PUBLIC TRUST REGULATIONS 2014 (REGULATIONS)
PUBLIC TRUST (COMMON FUND INTEREST RATES) ORDER 2014 (ORDER)

1. Following our letter regarding the above of even date to the Public Trustee in which you were copied, please find attached the Regulations and Order revised in accordance with section 5(1)(j) and (u) of the *Revision and Publication of Laws Act 2008*.
2. We attach them for your usual translation purposes and assigning of the Samoan Regulation (S.R.) number.
3. I kindly request that formal copies of both instruments be given to our Office and the Public Trust Office for our records.
4. Please contact me or Assistant Attorney General Loretta Teueli for any further queries if required.


(Ming C. Leung Wai)
ATTORNEY GENERAL

attch:

cc: Public Trustee - Public Trust Office (*letter only*)





SAMOA

**PUBLIC TRUST (COMMON FUND INTEREST
RATES) ORDER 2014**

Arrangement of Provisions

1. Citation and commencement
2. Interest rates

PURSUANT to section 24(4) of the Public Trust Office Act 1975 (the Act), I, **TUI ATUA TUPUA TAMASESE EFI**, Head of State, acting on the advice of Cabinet, **MAKE** this Order—

DATED this 2nd day of October 2014.

Signed: (Tui Atua Tupua Tamasese Efi)
HEAD OF STATE

1. Citation and commencement - (1) This Order may be cited as the Public Trust (Common Fund Interest Rates) Order 2014,

(2) This Order commences on the date it is signed.

2. Interest rates – For the purposes of section 24 of the Act, the interest payable to the respective estates the money for which constitutes the Common Fund is to be charged at a rate of 1% a year.

REVISION NOTES 2014

This is the official version of this Order as at 20 October 2014.

This Order has been revised and certified by the Attorney General under the authority of the Attorney General given under section 5(1)(j) and (u) of the *Revision and Publication of Laws Act 2008*.

Commencement date inserted, and correct date of the Order inserted.



Aumua Ming Leung Wai
Attorney General of Samoa

*This Order is administered
by the Public Trust Office*



SAMOA

PUBLIC TRUST OFFICE REGULATIONS 2014

PURSUANT to section 127(2) of the Public Trust Office Act 1975, I, **TUI ATUA TUPUA TAMASESE EFI**, Head of State, acting on the advice of Cabinet, **MAKE** the following regulations:-

DATED this 2nd day of October 2014.

Signed: Tui Atua Tupua Tamasese Efi
HEAD OF STATE

Arrangement of Provisions

PART I PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II FEES, COMMISSIONS AND CHARGES FOR TRUST MATTERS

3. Application of Part

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4. Real estate inspections
5. Dealings affecting shares in an estate
6. Attendance fees
7. Work done if representation not subsequently obtained
8. Attempted realisation of assets
9. Carrying on business
10. Administration account and audit fee
11. Remuneration of agents or attorneys
12. Fee for management of common fund
13. Fee for trust investment planning
14. Trust fee for long-term trusts

Division 2 – Scales of commission

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16. Commission on capital realised by former trustees
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19. Commission where Public Trustee acts as attorney or agent
20. Locating beneficiaries

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24. Search of records
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29. Deduction of fees, commission or charge from funds
30. Value Added Goods and Services Tax (VAGST) may be added to fees, commission or charges

PART III INDEX OF WILLS

31. Index of wills

PART IV MANAGED ESTATES

32. Application of this Part
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PART V MISCELLANEOUS

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| 35. Declaration of fidelity and
secrecy | 37. Preservation and destruction
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**PART I
PRELIMINARY**

1. Citation and commencement – (1) These Regulations may be cited as the Public Trust Office Regulations 2014.

(2) These Regulations commence on the date they are signed by the Head of State.

2. Interpretation – (1) In these Regulations, unless the context otherwise requires:

“Act” means the Public Trust Office Act 1975;

“estate”, in Parts II and IV, includes trust or fund;

“trustee” includes an administrator or executor or any other person acting in a similar fiduciary capacity.

**PART II
FEES, COMMISSIONS AND CHARGES FOR TRUST
MATTERS**

3. Application of Part – This Part applies to trust matters and matters other than managed estates.

Division 1 – Fees

4. Real estate inspections – The Public Trustee may charge a fee not exceeding:

- (a) \$150 an hour for an inspection or report regarding real estate; or
- (b) \$150 an hour for preparation of specifications for repairs or renovations to a building or other work regarding real estate; or
- (c) \$116 an hour for a second or subsequent inspection (including a report arising from the inspection)

on the progress of the repairs, renovations or work.

5. Dealings affecting shares in an estate – (1) The Public Trustee may charge a fee not exceeding \$68 for the notation and recording of the assignment, mortgage, or any dealing affecting a beneficiary's share in an estate.

(2) The fee is payable from the share of the beneficiary affected.

6. Attendance fees – The Public Trustee may charge a fee not exceeding:

- (a) \$40 for searching, marking, stamping lodging or uplifting of any document; or
- (b) \$75 for obtaining an exemplification of grant of probate or the preparation and administration of a power of attorney for the purpose of obtaining or realising assets situated outside Samoa; or
- (c) \$150 an hour for any other attendance outside the office.

7. Work done if representation not subsequently obtained – If, for the purpose of obtaining representation in an estate, the Public Trustee takes steps incidental to his or her duties but does not subsequently obtain representation, the Public Trustee may charge to the estate a fee not exceeding \$500 for the work involved.

8. Attempted realisation of assets – If:

- (a) the Public Trustee attempts, at the request of a beneficiary, to realise an asset in an estate, and
- (b) the asset is subsequently transferred or delivered to the beneficiary without becoming registered in the name of the Public Trustee,–

the Public Trustee may charge to the estate a fee not exceeding \$300 for the work involved.

9. Carrying on business – If it is necessary to carry on a business in connection with the Public Trustee's administration of an estate, the Public Trustee may charge to the estate a fee

that the Public Trustee considers just and reasonable, having regard to the work involved.

10. Administration account and audit fee – The Public Trustee may, on a monthly basis, charge to an estate administered by the Public Trustee an administration account and audit fee not exceeding \$10 on each account kept by the Public Trustee in respect of the estate.

11. Remuneration of an agent or attorney – If the Public Trustee appoints an agent or attorney to act on his or her for the administration of an estate, the Public Trustee may charge to the estate a fee as the Public Trustee considers just and reasonable for remuneration of the agent or attorney.

12. Fee for management of common fund – (1) The Public Trustee is entitled to receive from, or out of, the income received by a common fund under the Act a fee depending on the value of the work done and services rendered for the establishment, maintenance including the keeping of books of account and performance of the common fund.

(2) A fee received by the Public Trustee under subregulation (1), is to be calculated at a rate not exceeding 2% a year on the capital sums invested in the common fund during the period when the income is received or allocated.

13. Fee for trust investment planning – The Public Trustee may charge a fee not exceeding \$150 an hour for preparing, managing and reviewing an investment plan for a trust.

14. Trust fee for long-term trusts – (1) The Public Trustee is entitled to receive an annual trust fee for a trust other than a charitable trust committed to its administration or management for 2 years or more.

(2) The maximum annual trust fee is:

- (a) if the capital value of the trust property is \$250,000 or less, 0.5% of the capital value; or
- (b) if the capital value of the trust property is over \$250,000 but is \$500,000 or less, \$1,250 plus 0.75% of the capital value up to \$500,000; or

- (c) if the capital value of the trust property over \$500,000, \$3,125 plus 1% of the capital value over \$500,000.
- (3) The annual trust fee to which the Public Trustee is entitled under this regulation is to be paid:
- (a) by one-quarter or one-half of the annual trust fee; and
 - (b) at such dates,–
- as are determined by the Public Trustee.
- (4) If the Public Trustee administers or manages a trust to which this regulation applies for only part of one-quarter or one-half of the year to which an instalment relates, the amount of the instalment is to be reduced on a *pro rata* basis, according to the proportion that the period of the Public Trustee's administration or management of the trust in that one-quarter or one-half of the year bears to 3 or 6 months, respectively.
- (5) The annual trust fee to which the Public Trustee is entitled under this regulation may be paid:
- (a) wholly or partly from the capital value; or
 - (b) wholly or partly from the income of the trust property.
- (6) The Public Trustee:
- (a) is to consult with the beneficiaries, if it is practicable to do so, before determining from where a trust fee is to be paid; and
 - (b) must attempt such consultation at least once every 2 years.
- (7) In this regulation:
- “charitable trust” means a trust established for charitable purposes, and includes a trust established for public benevolent purposes;
- “capital value” for a trust committed to the administration or management of the Public Trustee, means the gross amount of the value of the assets (whether real or personal) of the trust without deduction of debts or liabilities secured or unsecured.

Division 2 – Scales of commission

15. Commission where Public Trustee realises capital –

- (1) If the Public Trustee is appointed or acts as trustee of an

estate, the Public Trustee may charge to the estate commission on the value of the capital assets calculated at the following rate:

- (a) 4% on the first \$100,000 or part of it; and
- (b) 3% on the next \$100,000 or part of it; and
- (c) 2% on the next \$100,000 or part of it; and
- (d) 1% on the value exceeding \$300,000.

(2) The Public Trustee may impose under this regulation a minimum charge of \$250 in respect of an estate under \$6,500.

(3) The commission under this regulation is payable on a capital asset at the time it is realised unless the Public Trustee directs that payment be deferred, either wholly or partially, until the period of any distribution.

16. Commission on capital realised by former trustees –

(1) The Public Trustee may charge to an estate commission, at the following rate:

- (a) 4% on the first \$100,000 or part of it; and
- (b) 3% on the next \$100,000 or part of it; and
- (c) 2% on the next \$100,000 or part of it; and
- (d) 1% on the value exceeding \$300,000,–

on the value of capital of the estate realised by a former trustee as becomes vested in the Public Trustee.

(2) The Public Trustee may impose under this regulation a minimum charge of \$250 in respect of an estate.

(3) The commission is payable on a capital asset as at the time it becomes vested in the Public Trustee unless the Public Trustee directs that payment be deferred, either wholly or partially, until the period of any distribution.

17. Commission on unrealised property – (1) The Public

Trustee may charge to an estate commission on the value (as fixed by the Public Trustee) of unrealised real or personal property (except money) transferred or delivered, unconverted into money to:

- (a) a devisee; or
- (b) a legatee; or
- (c) a beneficiary; or
- (d) a widower or widow; or
- (e) a next of kin; or
- (f) other similar class of persons,–

under a will, settlement, trust or intestacy administered by the Public Trustee in respect of the estate.

(2) The charge is calculated on the value of the property at the following rate:

- (a) 4% on \$100,000 or part of it; and
- (b) 3% on the next \$100,000 or part of it; and
- (c) 2% on the next \$100,000 or part of it; and
- (d) 1% on the value exceeding \$300,000.

(3) The Public Trustee may impose under this regulation a minimum charge of \$250 in respect of an estate.

18. Commission on income – If the Public Trustee acts as trustee of an estate, the Public Trustee may charge to the estate (other than a trust to which regulation 15 applies) commission on the gross amount of income received by the Public Trustee at the following rate:

- (a) 5.25%, except as provided by paragraph (b);
- (b) 2.5%, for gross income received from rent that is subject to an agency collection charge.

19. Commission where Public Trustee acts as attorney or agent – If the Public Trustee acts as attorney or agent, the Public Trustee may charge commission payable under both capital asset and income, to be as arranged between the principals and the Public Trustee.

20. Locating beneficiaries – (1) If:

- (a) the existence or identity of any or all of the persons beneficially entitled to share in an estate or of the next-of-kin is unknown or is not definitely established; and
- (b) it is necessary for the Public Trustee to make enquiries or to advertise for the purpose of locating the persons or next-of-kin,–

the Public Trustee may charge to the estate, or the share of the estate a commission he or she considers just and reasonable.

(2) The commission should not exceed 5% of the net value of the estate after payment of original claims.

Division 3 – Charges

21. Charges incidental to exercise of power of sale – (1) If the Public Trustee is authorised by an order of a court to sell land in respect of an estate, the Public Trustee may, unless otherwise directed by the court, charge on the estate a fee on the value of the land of not exceeding:

- (a) if the land is sold—
 - (i) 4% on the first \$100,000 or part of it; and
 - (ii) 3% on the next \$100,000 or part of it; and
 - (iii) 2% on the next \$100,000 or part of it; and
 - (iv) 1% of the value exceeding \$300,000; or
- (b) \$450 if the land is not sold.

22. Execution of documents – The Public Trustee may, except for an estate administered by the Public Trustee, charge the following fees of not exceeding:

- (a) \$68 for executing an assurance of property by direction;
- (b) \$68 for executing an assurance by way of confirmation;
- (c) \$68 for executing a necessary consent for a mortgagee to exercise powers under a mortgage.

23. Production of documents – The Public Trustee may charge a fee not exceeding \$40 for producing a deed or document of title.

24. Search of records – The Public Trustee may charge a fee not exceeding \$150 an hour for the time involved in making a search (including the nature or volume of the information sought) for records held by the Public Trustee.

25. Legal advice and proceedings – The Public Trustee may charge to an estate a fee to cover the costs and expenses incurred by the Public Trustee in providing any legal advice, or in conducting any legal proceedings, in connection with an estate.

26. General power to charge for services – The Public Trustee may charge a fee for a service or matter not provided in these Regulations as agreed or as determined by the Public Trustee to be just and reasonable if there is no agreement.

Division 4 – General

27. Fees cumulative – A fee, commission or charge that is payable from an estate under these Regulations is in addition to any other fee, commission or charge, and any other cost or expense, that is payable from the estate.

28. Amount of fees to be determined by Public Trustee – The Public Trustee may determine the amount of a fee, commission or charge that is not determined under this Part to be payable in any particular case.

29. Deduction of fees etc., from funds – The Public Trustee may deduct a fee, commission or charge that:

- (a) is payable under this Part in connection with an estate from any money that belongs to the estate;
and
- (b) is held by the Public Trustee; or
- (c) is under the control of the Public Trustee.

30. Value Added Goods on Services Tax (VAGST) may be added to fees, commission or charges – (1) The Public Trustee may, in addition to a fee, commission or charge payable under these Regulations, charge the amount of any VAGST payable in respect of the service for which the fee, commission or charge is payable.

(2) This regulation applies even if a provision of these Regulations limits an amount that may be charged by the Public Trustee.

PART III INDEX OF WILLS

31. Index of wills – The Public Trustee is to maintain an index of all wills lodged with the Public Trustee for safe custody.

PART IV MANAGED ESTATES

32. Application of this Part – This Part applies to trust matters where the Public Trustee acts as manager of the affairs of a managed person.

33. Interpretation – In this Part, “managed person” means a person in respect of whom:

- (a) an order of the Supreme Court is in force to the effect that the person has been found to be incapable of managing his or her own affairs and that the person’s estate is subject to management under section 59 of the Act; or
- (b) an Administration Order is made by the Supreme Court appointing the Public Trustee to administer either the whole or part of such a person’s estate pursuant to section 24(2) of the Mental Health Act 2007.

34. Fees payable to the Public Trustee – (1) The following fees are payable to the Public Trustee in respect of managed persons:

- (a) for the management of an estate—
 - (i) for the first year, 2.1% of the value of the estate; and
 - (ii) for every subsequent year, 1.1% of the value of the estate;
- (b) for the management of an investment for a managed person in a common fund, 0.5% a year of the value of the investment;
- (c) for the investigation, preparation or lodgement of a return required by a taxation authority in respect of an estate in which the Public Trustee acts, a reasonable fee for the investigation, preparation or lodgement determined by the Public Trustee;
- (d) for the development of a financial plan for a person in respect of whom a manager of the estate has been appointed, a reasonable fee determined by the Public Trustee;
- (e) for filing, examination and passing of accounts, a fee not exceeding \$300 determined by the Public Trustee may;

- (f) for any other service provided, or any other disbursement incurred, by the Public Trustee in the administration of an estate, a reasonable fee determined by Public Trustee.
- (2) The Public Trustee may, in addition to a fee under subregulation (1), charge the amount of any VAGST payable in respect of the service for which the fee is payable.

PART V MISCELLANEOUS

35. Declaration of fidelity and secrecy – For purpose of section 12(1)(b) of the Act, the declaration of fidelity and secrecy must be made in the form set out in the Schedule.

36. Form of seal, security and mode of affixing – (1) The seal of the Public Trustee shall be in a form approved by the Public Trustee.

(2) The seal shall be kept under lock at the office of and in the custody of the Public Trustee.

(3) If the Public Trustee or his or her deputy or either of them executes a document under seal, his or her signature and official designation shall appear thereon and is to be sealed, but except as expressly required by an Act or these Regulations, it is not necessary for the execution to be witnessed or for the document to include an attestation clause.

(4) If the Public Trustee or his or her deputy or either of them executes (under Part V of the Act), an election in writing or a memorandum or a certificate, under the seal, his or her signature and official designation shall appear on it and is to be sealed but it is not necessary for the execution to be witnessed or for the document to include an attestation clause.

(5) A document to which subregulation (3) or (4) applies may be witnessed and may include an attestation clause if the nature of the document makes that necessary, if in the opinion of the person who executes it, attestation is desirable, whether by reason of the document being required for use abroad or for any other reason which he or she considers to be sufficient.

(6) Except as provided under this regulation, a document under seal executed on behalf of the Public Trustee by his or her deputy shall:

- (a) be signed by his or her deputy; and
- (b) be sealed with the seal; and
- (c) be witnessed by some other person; and
- (d) include an attestation clause in the following words or words to the like effect:

“Signed on behalf of the Public Trustee by the Deputy Public Trustee and sealed in the presence of (witness):”.

37. Preservation and destruction of records and documents – (1) The minimum periods of time for which the documents and records relating to estates or loans shall be retained in the custody of the Public Trustee are as follows:

- (a) ledger leaves and ledger cards in which estates and other payments and receipts are recorded, 25 years from the date of closing of the accounts to which they relate;
- (b) files relating to estates administered by the Public Trustee, 25 years from the date of completion of the administration;
- (c) files relating to loans actually made, 7 years from the date of discharge of the mortgage or (if there is no mortgage) from the date of repayment of the loan;
- (d) files relating to applications for loans declined, withdrawn, or otherwise not proceeded with, 3 years after the application has been withdrawn, declined, or otherwise disposed of;
- (e) vouchers and receipts for money paid by the Public Trustee, 20 years from the date of payment;
- (f) copies of receipts for money paid to the Public Trustee (being the copies used for the purpose of completing other accounting records), 10 years after the date of payment;
- (g) books, cards, papers and records not otherwise specially provided for, 1 year.

(2) No file to which this regulation applies is to be destroyed until it has been searched by a responsible officer appointed by the Public Trustee to see that all documents of importance have been removed and there is no special reason for keeping the file but no documents of importance need to be

removed or kept if copies (whether on microfilm or otherwise) are being kept.

(3) An officer supervising the disposal of documents or records must prepare and initial lists of files destroyed.

(4) Each list prepared and initialled under subregulation (3) must show the name in full of the estate or loan to which each file relates and other particulars necessary for identification.

(5) Index cards affected are to be marked with the words "File destroyed", with the date.

(6) No files or papers are to be destroyed without written approval of an officer authorised by the Public Trustee to give such approval.

(7) The Public Trustee or officer appointed to supervise the disposal of documents or records is to be the sole judge as to the date on which, an account is closed, administration of an estate is completed, a mortgage is discharged, or a loan is repaid, an application for a loan is withdrawn, declined, or otherwise disposed of, or a payment is made.

(8) After the period of retention referred to in this regulation the documents or records may be destroyed by fire or as the Public Trustee approves.

38. Repeal – (1) The Public Trust Office Regulations 1978 are repealed.

(2) The repeal of the Public Trust Office Regulations 1978 does not affect a document made or anything done under that Regulations and the document or thing, so far as it is subsisting or in force at the time of the repeal and not being inconsistent with these Regulations, continues as if it were made or done under the corresponding provision of these Regulations.

SCHEDULE (Regulation 35)

DECLARATION OF FIDELITY AND SECRECY

I, [*Full name*], of [*Address and occupation*], solemnly and sincerely declare that I will truly and faithfully, according to the best of my skill and ability, perform the duties imposed upon me in my capacity as [*a member of the staff of the Public Trust Officer/an agent of*

the Public Trustee/a member of the Public Trust Office Investment Board], and that in the performance of my duties I will maintain and aid in maintaining the secrecy of all matters coming to my knowledge relating to the business of the Public Trust Office, or relating to the affairs of an estate under administration in the Public Trust Office, or relating to the affairs of a person concerned in any such estate, and will not divulge any information relating to those matters except as may be authorised by law to a person directly interested and entitled to information, or for the purpose of assisting to carry out the powers and functions of the Public Trustee and my own proper duties.

I am aware that I may be liable to a fine or imprisonment if I contravene section 12 of the Act relating to this declaration.

And I make this solemn declaration conscientiously binding myself to adhere to and observe the same, and by virtue of section 12 of the Public Trust Office Act 1975.

Signature.....

DECLARED at.....this.....day of
.....20.....before me:

.....

Public Trustee

REVISION NOTES 2014

This is the official version of these Regulations as at 20 October 2014.

These Regulations have been revised and certified by the Attorney General under the authority of the Attorney General given under section 5(1)(j) and (u) of the *Revision and Publication of Laws Act 2008*.

Commencement date inserted, and correct date of the Regulations inserted.



Aumua Ming Leung Wai
Attorney General of Samoa

*These Regulations are administered
by the Public Trust Office*