



**INTERNATIONAL CENTRE FOR NOT-FOR-PROFIT LAW (ICNL)
Pacific Civil Society Law Programme**

***Law and the Role of Non-State Actors: A Review of the
Legislative Framework Governing Civil Society
Organisations in Samoa***

A Country Report

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I INTRODUCTION

Formerly known as *Western Samoa*, the Independent State of Samoa is a sea-locked state located within the Western central Pacific Ocean. The country was a former German colony up to the end of WWI when it was placed under trusteeship of the League of Nations and eventually its successor the United Nations trusteeship of New Zealand. It gained its independence in 1962 after its people adopted the 1960 Constitution through the Constitutional Convention held the same year. The country adopted a constitutional legal system incorporating common law and customary law with the Constitution being its supreme law.

The Country has a unicameral Parliament with 49 seats to be filled by popular vote. Elections are held every five years, and it was not until 1990 when government introduced universal suffrage enabling all Samoans of age 21 or above to vote for the first time. However, it maintained the two separate Rolls or registers: (i) the *Territorial Constituencies Rolls* containing all Samoans of 21 years and over,¹ and (ii) the *Individual Voters Roll* containing Samoan citizens of foreign and mix descent, their spouses and naturalised citizens. The executive branch of the State consists of the Head of State, Prime Minister, Cabinet, and the Executive Council which consists of all of the above.

The country's economy is relatively small with low natural resource endowment. At present the economy is driven predominantly by remittances² with contributions from tourism, agriculture, construction, fisheries, and small-scale manufacturing. This great reliance on and rise in remittances is attributed to the more than 100'000 Samoans migrating overseas in search of greener pasture.³ The country's domestic population⁴ is currently estimated at 181'000

¹ Until the introduction of universal suffrage in 1990, the Roll was reserved only for *Matai* title holders.

² This accounts for 24% of the country's GDP in 2004, 32% in 2005, and will continue to rise by present indicators.

³ They are mainly found in New Zealand, Australia, and the United States.

⁴ Excluding Samoans overseas.

with an average growth rate of 1%. More than half of the population live in rural areas and engaged mainly in subsistence agriculture.

As a Polynesian country by race, Samoa is a highly stratified society with a strong matai (chiefly) system. Whilst introduced law in general rule the urban centres and matters reminiscent of globalisation and the cash economy, it is custom that rules the villages. With the highest literacy rate in the region of 99%, there is common understanding from the lowest to highest levels towards the roles and importance of civil society in the country. Thus, the presence and operation of custom does not necessarily impede the growth of civil society and activities thereof. The general consensus is that so long as one does not tread on *forbidden areas* or taboos, his or her activities are considered permissible.

Civil society organisations (CSOs)⁵ have been around in the country for decades, facilitated in part by legislation that was in place well before independence.⁶ Their activities in the country are divergent and reach right down to the rural areas in which government services are seldom seen. The contribution of CSOs in the development of the country has not gone unnoticed, as there is growing support towards the programs of such organisations from overseas donor agencies and governments. Australia and New Zealand have for instance shown commitment to assist the Samoan Government in promoting the participation of the country's civil society in national policy, programs and services.⁷ Support for CSOs includes focus on strengthening participation of groups in socioeconomic and political arenas, and the promotion protection and providing of education on the rights of youths, women and people with special needs.⁸

⁵ The expression *civil society organizations* (CSOs) will be used throughout this report to refer to non-profit organizations (NPOs), non-governmental organizations (NGOs), societies, trust board, councils and associations whether incorporated or otherwise.

⁶ The *Cooperative Societies Act* and *Incorporated Societies Act* were both enacted in 1952 – some 8 years before independence.

⁷ Governments of Samoa, Australia and New Zealand, *Joint Samoa Program Strategy 2006-2010*, 22.

⁸ Ibid.

II ENABLING LEGISLATIVE & OPERATIONAL ENVIRONMENT

By virtue of article 13(1) of the Constitution of the Independent State of Western⁹ Samoa 1960, *‘[a]ll citizens of Western Samoa shall have the right to freedom of speech and expression, to assemble peaceably and without arms, [and] to form associations or unions...’* However, the exercise of such rights is subject to any laws enacted by the Legislative Assembly for the protection of national security, friendly relations with other States, public order, health or morals.

A Nature and Types of CSOs

Civil society organisations in the Independent State of Samoa comprise both incorporated and unincorporated associations, and membership and non-membership organisations. Whilst some international NGOs do have branches in the country, the majority are local organisations. The non-membership organisations (in particular the international NGOs) mostly operate in the pursuit of activities for the public benefit whilst a good majority of the local organisations were established principally for private gain albeit with some spill-over benefit to the general public. Within villages, one would normally find unincorporated associations of various forms such as village committees and youth groups.

As is common throughout the Pacific Islands region, the focus of most CSOs is predominantly socioeconomic development with emphasis on rural communities. Thus, whilst the establishment of some local CSOs may be driven by pecuniary interests, the underlying objective will always be the advancement of livelihood for members and participating communities. A classic example of this category is those CSOs that engage in micro-lending schemes for micro-projects within local communities. There are also church-based organisations whose programs mainly centre on charitable and religious activities. In general, the specific areas of focus in Samoa in terms of targeted areas are diverse, and

⁹ The country’s official name has since been changed to *Samoa* by legislative enactment with the deletion of the word ‘Western’.

include community development, youth, gender equality, good governance and transparency, environment, infrastructure, education and capacity building, health awareness, family welfare and domestic violence.

B Purposes and roles of Civil Society Organisations

Whilst the purpose and objects of most incorporated CSOs are prescribed in detail in their constitutions, this section will only focus on objects as set out various statutes enacted by the country's Legislative Assembly. This section will be approached by looking at different legislation categorised according to their scope and application. These are **(a)** legislation with general application which provides the enabling legislative framework for incorporation of all classes of CSOs (*general legislation*) and **(b)** statutes that provide for the incorporation of identifiable specific bodies with prescribed mandates (*special legislation*). General legislation includes the *Charitable Trusts Act 1965*, *Incorporated Societies Act 1952*, and the *Cooperative Societies Act 1952*, whilst special legislation includes the *Robert Louis Stevenson Foundation Act 1991*, *Samoa Polytechnic Act 1992*, *National University of Samoa Act 1997*, and the *Oceania University of Medicine (Samoa) Act 2002*.

1 Statutory Objects

(i) General Legislation

(a) *Charitable Trusts Act 1965*

As the principal statute governing organisations established for charitable or benevolent causes, ss.6 and 7 of the Act are unequivocal as its provisions apply to societies which are operating '*exclusively or principally for charitable purposes....*'

(b) *Incorporated Societies Act 1952*

As legislation for the incorporation CSOs of divergent natures that do not qualify for registration under the *Charitable Trust Act* or *Cooperative Societies Act*, provisions of the *Incorporated Societies Act* are ambiguous as to the prescribed objects which would qualify or render an organisation eligible for registration under its provisions. Section 3 of the Act however takes an inclusive approach by prescribing only the disqualifying factor or object for denying registration. Thus, by virtue of s.3, '*[a]ny society consisting of not less than 15 persons associated for any lawful purposes but not for pecuniary gain*' qualifies for registration under the Act. By inference, all lawful objects, whether charitable or otherwise, are covered under the above provision. Section 5 however requires that '*the rules of a society shall state...the objects for which the society is established*'.

(c) *Cooperative Societies Act 1952*

Opposed to the amorphous approach in the *Incorporated Societies Act*, the definition of objects for registration of cooperative societies is unequivocal. Section 4 of the Act thus stipulates that a society will be eligible for registration if its principal object is '*the promotion of the economic interests of its members in accordance with cooperative principles....*'

(ii) Special Legislation

(a) *Robert Louis Stevenson Foundation Act 1991*

This Act incorporates through legislative enactment a foundation which seeks to perpetuate the historical heritage of the country. Section 4 of the Act prescribes the objects of the Foundation as including the restoration, maintenance, and preservation of the estate of the Robert Louis Stevenson as part of the heritage of Samoa.

(b) Western Samoa Polytechnic Act 1992

By virtue of s.4(a) of the Act, the object of the polytechnic is *'to provide a wide diversity of continuing education, including vocational training, and dissemination of knowledge and expertise and promotes community learning, and by research, particularly applied and technological research, that aids development in Western Samoa'*.

(c) National University of Samoa Act 1997

The Objects and functions of the University are set out in s.5 of the Act which provides:

The functions of the University, within the limits of its resources are (a) The establishment of a centre of excellence in the study of Samoa, the Samoan language and Samoan culture; (b) The acquisition and transmission of knowledge by teaching, consultancy and research; (c) The encouragement of intellectual independence; (d) The provision at appropriate levels of education and training responsive to the needs of the people of Samoa; (e) The promotion of the economic and social development of Western Samoa; and (f) The realisation of the goals and guiding principles of the University as set out in the Charter.

(d) Oceania University of Medicine (Samoa) Act 2002

By virtue of s.8 of the Act, functions and objects of the medical university includes the establishment of a centre of excellence in the study, training and research in medicine and health care in its various disciplines inclusive of medical, dental and nursing; the acquisition and transmission of knowledge in medicine and health care by teaching, research and consultancy; and the encouragement of intellectual independence

2 Determination of Status

The status of CSOs is entirely dependent on the objects of such organisations, as well as the statute under which an application is made. In terms of objects, these are either prescribed in enabling statutes or other instruments governing the establishment and operation of the same such as constitutions. In this connection, there is no authority established by legislation or otherwise to function as a regulatory institution for determining whether an organisation is established for charitable or public benefit purposes so as to be eligible for benefits such as tax exemption or government subsidy.

General legislation providing the principal legal framework for the operation of CSOs (*viz. Charitable Trusts Act, Cooperative Societies Act, and Incorporated Societies Act*) by construction offers some assistance by way of a clearing house mechanism. Thus, applications for registration emerge as the most crucial stage at which the Registrar of Incorporated Societies¹⁰ or the Registrar of Cooperative Societies¹¹ upon accepting an application is deemed to confirm the status of an applicant organisation. However, that alone is inconclusive as the express conferment of status through prescribed instruments is not plainly addressed within the legislative framework. In this contention, the issuance of a certificate of registration by a Registrar only operates as conclusive evidence of an organisation being duly registered – not as evidence of confirmation of status. Section 13 of the *Charitable Trusts Act* provides a crucial illustration of this critical point. Thus, by virtue of s.13:¹²

Every certificate of incorporation issued under the seal of the Registrar shall be sufficient evidence, in the absence of proof to the contrary, that the Board therein named was incorporated on the date specified in the certificate, and that the procedural requirements of this Part of this Act have been observed, but shall not be evidence that the purposes of the trust or society are exclusively or principally charitable.

3 Media Access and Exercise of Related Freedoms

¹⁰ For applications under the *Charitable Trusts Act* and the *Incorporated Societies Act*.

¹¹ For applications under the *Cooperative Societies Act*.

¹² Equivalent provisions are s.9 of the *Charitable Trust Act*, and s.8 of the *Incorporated Societies Act*.

Opposed to the operating environment in neighbouring Tonga, CSOs in Samoa have enjoyed a relatively free environment in terms of freedom of association and expression. More so, their access to and use of the mass media in raising awareness and promoting their programmes is not subject to any strict censorship controls. However, as is common throughout the region, this privilege is not absolute in the event an organisation's activity is considered as posing a threat, either real or imminent, to national security, friendly relations with other states, public order or morals. Thus, by virtue of article 13(2) and (3) of the Constitution, the exercise of the rights or freedoms of expression and association will not *'affect the operation of any existing law or prevent the State from making any law in so far as that existing law or the law so made imposes reasonable restrictions on the exercise of the [such rights and freedoms]'*.

Media access is almost always guaranteed under existing laws, thus, not a problematic area at present. CSOs have been using various mediums to draw attention to their causes; the cheapest and most effective of which is the print media. Whilst most CSOs have largely depended on dailies operated by private business enterprises to disseminate information, some have resorted to publishing their own information material to ensure procuring wider readership and awareness of their programs on a larger scale. In the case of this latter category, the *Newspapers and Printers Act 1992-93* is a relevant statute as the Act imposes certain requirements which equally apply to CSOs. Thus, s.9 of the Act for instance requires for purposes of identification of source the name of the printer or publisher of a newspaper or any material containing information for distribution to be printed therein. Section 9 thus stipulates that *'[a]t the end of every newspaper and, of every supplement sheet thereof there shall be printed ... the place of the registered office of the company or society....'* Section 11(2) further requires that if a document *'is printed by... [an] incorporated society, the place (including the village and the street or road and the number, if any, in the street or road) of the registered office of the...society shall appear instead of the place of business of the printer.'* However, s.13 of the Act provides exemption by stipulating that *'[a]ny document containing only matter of a purely... religious,*

social...scientific, scholastic...character or...is wholly...issued in respect of any exhibition, performance, game, or sport' will be exempted from the requirements of s.11. It is most probable than otherwise that the publications of most CSOs will fall under the prescribed categories exempted under s.13 of the Act.

C Establishment and Incorporation

Processes for the conferring of juridical status to CSOs, i.e. registration or incorporation, are not centralised under a single statute. Whilst those that are incorporated by special legislation do not require separate registration to acquire juridical status, those that are not statutory bodies or are not incorporated by special legislative enactment will nonetheless find refuge in the general category of legislation, viz. the *Charitable Trusts Act, Incorporated Societies Act, and Cooperative Societies Act*. These will be discussed below.

1 Registration

(i) Charitable Trusts Act

Registration under this Act requires no minimum membership so as to be eligible for incorporation. The important requirement is that the trust must be established exclusively or principally for charitable purposes. The process for incorporation is commenced by an application in the prescribed form (Forms 1 & 2 of the Schedule) lodged with the Registrar – the latter is the Registrar of incorporated societies appointed under the *Incorporated Societies Act*. Application is to be made by the trustees of a trust or an unincorporated society. Note however that such registration is also contingent upon evidence of authorisation through internal processes of the applicant which includes a resolution passed by the majority in accordance with the rules of the trust or society.¹³ Documents to be furnished to the Registrar before registration can be effected includes (i) a certified copy of a document (will, trust declaration, etc) evidencing the general purposes of the applicant trustees or society, (ii) a

¹³ s.8 of the Act.

statutory declaration by one subscriber to such application setting out details of any trusts property not specified under (i) above, (iii) a copy of the society's rules providing for constitution of the same, and (iv) a statutory declaration by a subscriber to the application showing proof that such application is made pursuant to a resolution passed in accordance with rules of the applicant society.¹⁴ Upon being satisfied the purpose of the applicant is principally charitable, and procedural requirements of the Act being complied with, the Registrar will then issue under his seal a certificate of incorporation of the board of the trust or society.¹⁵

(ii) *Incorporated Societies Act*

To be eligible for registration, a society must consist of at least 15 persons whose majority resolution authorising incorporation is similarly required for consideration of the application by the Registrar of Incorporated Societies appointed by the Public Service Commission under the Act. Application for incorporation is to be made pursuant to s.6 of the Act which requires two copies of the rules of the society to be attached with the application and signed by at least 15 members of the society, or in the case of a body corporate, the affixing of its seal. Note however that each signature of a subscriber is to be attested by an independent witness who is not a subscriber. Further, s.6(b) requires that such application must be accompanied by the prescribed fee *'together with a statutory declaration made by a solicitor to the effect that a majority of the members of the society have consented to the application and that the rules so signed or sealed are the rules of the society'*. Registration is completed with the issuance of a certificate of registration by the Registrar,¹⁶ an act the effect of which would render

the subscribers to the rules of the society, together with all other persons who are then members of the society or who afterwards become members of the society in accordance with the rules thereof, shall from the date of

¹⁴ s.10

¹⁵ s.11

¹⁶ s.7

incorporation mentioned in the certificate, be a body corporate...having perpetual succession...and capable...of exercising all the functions of a body corporate and of holding land.

(iii) *Cooperative Societies Act*

Applications for registration are to be made to the Registrar of Cooperative Societies appointed by the Public Service Commission under s.3 of the Act. To be eligible for registration, a society must have at least 10 members¹⁷ who have attained 18 years of age or older, and ‘*be resident within or a matai within or a title holder by Samoan custom within the society’s area of operation*’ as set out in its bylaws.¹⁸ An application is to be made to the Registrar together with copies of proposed bylaws of the society and must be signed by at least 10 persons qualified to be members. In the case of a registered society being a corporate member of the applicant society, s.6(2)(b) requires the signature of a duly authorised person on behalf of the former, ‘*and where all the members of the society are not registered societies, by 10 other members, or when there are less than 10 other members, by all of them*’. Registration will be done upon the Registrar being satisfied that a society and its constituent bylaws have complied with provisions of the Act.¹⁹ Successful completion of such process is evidenced by a certificate of registration issued by the Registrar.²⁰

2 Administering Authority

There are two separate Registrars performing all statutory functions set out in the *Charitable Trust Act*, *Incorporated Societies Act*, and the *Cooperative Societies Act*. The registration of all trusts and incorporated societies is done by the Registrar appointed under the *Incorporated Societies Act*, whilst the registration of cooperative societies is done by the Registrar appointed under the *Cooperative Societies Act*. It is uncertain whether functions of the two Registrars, for purposes of practicality and operational expediency, are merged

¹⁷ s.5

¹⁸ s.21

¹⁹ s.7

²⁰ s.9

and performed by a single civil servant as would have been the case in most Pacific island countries such as Solomon Islands. However, it is most likely that that may have been the case as the *Charitable Trusts Act*, *Incorporated Societies Act*, and *Cooperative Societies Act* are supposedly administered within the same Government department.

3 Management of Registry & Accessibility

There is no centralised registry that functions as the sole statutory repository of information relating to all registered CSOs.²¹ But given the identical functions of the Registrars appointed under the forgoing enabling statutes, it is imperative that some operational centralisation be put in place. However, a register of incorporated societies and trust boards is to be kept and managed by the Registrar by virtue of provisions of the *Incorporated Societies Act*²² and *Charitable Trusts Act*²³ respectively. The *Cooperative Societies Act* is rather silent on this issue as its provisions require instead the operation of a register of members by a registered society.

Public access to the registers established under the above statutes is guaranteed. However, a nominal fee is or may be charged for the inspection of and extraction of information from the registers kept by the Registrar under the *Charitable Trusts Act*²⁴ and *Incorporated Societies Act*.²⁵ No such fees may be charged under the *Cooperative Societies Act* as the bylaws and membership list of a registered society is ‘open to inspection, free of charge, at all reasonable times at the registered address of the society’.²⁶ It can be inferred from the differing approach vis-à-vis fees that an inspection of records kept by the Registrar will attract a fee for the service provided whilst otherwise for

²¹ However, the author will not speculate on or discount the prospects of such single registry, for practicality reasons, operating at the time of preparing this report as no such information is furnished to him.

²² s.32

²³ s.31

²⁴ s.34

²⁵ s.33

²⁶ s.12

inspections of records kept by and at the registered office of a cooperative society.

D Termination of Operation

This section will consider in brief at the processes and grounds of bringing to end the operation and juridical existence of a registered society and trust board, as well as the remedies available to a society aggrieved by such acts or decisions. In general, options to extinguish the existence of a registered society or trust board can be pursued through three mechanisms: (i) voluntary winding up, (ii) winding up by court, or (iii) dissolution and cancellation by the Registrar. Discussion herein will be restricted to the powers of the Registrar in relation to any or all of the options outlined.

1 Cancellation, Dissolution & Winding Up

(i) Charitable Trusts Act

By virtue of s.27 of the Act, an incorporated board of a society may be wound up voluntarily by resolution of its members.²⁷ Similarly, an application for winding up by the Supreme Court may be made by any of the following: (a) Attorney General, (b) board, (c) a member of the board, (d) a creditor of the board, (e) Registrar or *'any other person who adduces proof of circumstances which in the opinion of the Court make it proper that he should make the application'*.²⁸ The powers of the Registrar is most crucial in s.29 of the Act which confers upon the same the power to dissolve a board upon being satisfied that such board *'is no longer carrying on its operations or has been registered by reason of a mistake of fact or law...'* No other grounds for dissolution are prescribed either implied or express in the Act, thus, giving the Registrar the ultimate power and discretion to make a decision in the exercise of such power.

²⁷ Note however that the provision requires a subsequent meeting to confirm the resolution for voluntary dissolution to be held no sooner than the 28th day and not later than the 42nd day after initial passing of the resolution.

²⁸ s.28(2)

(ii) *Incorporated Societies Act*

The approach under this Act is almost identical to that in the *Cooperative Societies Act* as all three options of bringing to end the juridical status of a registered society are available. Thus, an incorporated society can be wound up voluntarily by resolution of its members confirmed at a subsequent meeting,²⁹ or it can be wound up by petition to the Supreme Court with such action to be instituted by the society or a member thereof, a creditor or the Registrar.³⁰ Opposed to the *Charitable Trusts Act*, the grounds for winding up by the Supreme Court under the *Incorporated Societies Act* are prescribed. By virtue of s.24 of the Act a society may be wound up if:

- (a) the society suspends its operations for the space of a whole year or (b) the members of the society are reduced in number to less than 15 or (c) If the society is unable to pay its debts or (d) If the society carries on any operation whereby any member thereof makes any pecuniary gain contrary to the provisions of [the Act] or (e) a Judge of the Supreme Court is of the opinion that it is just and equitable that the society should be wound up.

Further, the Registrar may by virtue of s.27 of the Act dissolve a society if he or she '*is satisfied that a society is no longer carrying on its operations or has been registered by reason of a mistake of fact or law....*' Note however that the Registrar's power to carry out dissolution also includes the power to revive and reinstate a society to the register by revoking the earlier declaration in the event the latter is made in error.³¹

(iii) *Cooperative Societies Act*

²⁹ s.23

³⁰ s.25

³¹ s.27(3)

Only two options for terminating the operation of a society are present within provisions of the Act, viz. dissolution upon application of at least $\frac{3}{4}$ of members of the society,³² or a cancellation of registration by the Registrar on the ground that membership of the society is reduced to less than 10. Thus, s.39 provides:

The Registrar may by order in writing cancel the registration of any registered society other than a society which includes among its members one or more registered societies, if at any time it is proved to his satisfaction that the number of the members has been reduced to less than 10. Every such order shall take effect from the date thereof.

Strangely enough, the Act lacks provision for the revival and reinstatement of a society to the register in the event the Registrar's exercise of power under s.39 is done on the basis of error or mistake. This must be addressed as a society, once cancelled, will, by operation of s.40, '*cease to exist as a corporate body from the date in which the order takes effect...*'

2 Liquidation

Whilst a liquidator is to be appointed by the Registrar to undertake liquidation of a cancelled society under the *Cooperative Societies Act*, provisions of the *Charitable Trusts Act* and *Incorporated Societies Act* are rather silent despite the presence of features reminiscent of liquidation processes.

(i) Charitable Trusts Act

By virtue of s. 30, all surplus assets of a board being wound up or dissolved by the Registrar are to be disposed of as per direction of the Supreme Court after the payment of all debts, costs and liabilities. It is unclear which party will play the role equivalent to a *liquidator*, let alone the instituting party effecting application for Court directions in cases of voluntary winding up or dissolution by the Registrar.

³² s.38

(ii) *Incorporated Societies Act*

Section 26 takes a slightly different approach as upon voluntary winding up or dissolution of a society by the Registrar, '*all surplus assets after the payment of all costs, debts and liabilities shall, subject to any trust affecting the same, be disposed of in manner provided by the rules of the society or if such assets cannot be disposed of in accordance with the rules, then as the Registrar directs*'. Where winding up is done by the Court, its intervention will be required in the event such surplus assets are the subject of a trust.

(iii) *Cooperative Societies Act*

A liquidator is to be appointed by the Registrar under s.41 in the event of cancellation of a society under ss.38 and 39 of the Act. The powers and functions of a liquidator are set out under s.42 but will be exercised subject to the controlling powers of the Registrar who can *inter alia* remove the liquidator. In essence, the powers of a liquidator are to:³³

- (a) Determine from time to time the contribution to be made by members and past members or by the estates of deceased members of the society to its assets;
- (b) Appoint a day by notice before which creditors whose claims are not already recorded in the books of the society shall state their claims for admission or be excluded from any distribution made before they have proved them;
- (c) Decide any question of priority which arises between creditors;
- (d) Refer disputes to arbitration or institute and defend suits and other legal proceedings on behalf of the society by his name or office;
- (e) Decide by what persons and in what proportions the costs of liquidation are to be borne;
- (f) Give such directions in regard to the collection and distribution of assets as may be necessary in the course of winding up the society;
- (g) Compromise any claim by or against the society provided the sanction of the Registrar has first been obtained;

³³ s.42

- (h) Call such general meetings of members as may be necessary for the proper conduct of the liquidation;
- (i) Take possession of the books, documents and assets of the society;
- (j) Sell the property of the society;
- (k) Carry on the business of the society as far as may be necessary for winding it up beneficially, provided that nothing herein contained shall entitle the liquidator or a credit society to issue any loan;
- (l) Arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Registrar.

Note that in the process of liquidation, the liquidator is empowered *‘to summon or enforce the attendance of parties and witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of the Supreme Court of...Samoa’*.³⁴ In exercising his or her powers of control and revision over a liquidator, the Registrar may:³⁵

- a) Rescind or vary any order made by a liquidator and make whatever new order is required;
- (b) Remove a liquidator from office;
- (c) Call formal books, documents and assets of the society;
- (d) By order in writing limit the powers of a liquidator under section 42;
- (e) Require accounts to be rendered to him by the liquidator;
- (f) Procure the auditing of the liquidator’s accounts and authorise the distribution of the assets of the society;
- (g) Make an order for the remuneration of the liquidator;
- (h) Refer any subject of dispute between a liquidator and any third party to arbitration if that party consents in writing to be bound by the decision of the arbitrator.

3 Appeals

Matters in relation to which appeals can be made are clearly spelt out in the *Charitable Trusts Act, Cooperative Societies Act, and Incorporated Societies Act*.

³⁴ s.42(2)

³⁵ s.43

These are (i) appeals to the Supreme Court³⁶ or the Head of State³⁷ against the decision of the Registrar in refusing to register trustees or a society, or an amendment of a society's rules, (ii) appeal with consent of the Attorney-General to the Supreme Court against an order of the liquidator or Registrar relating to the process of liquidation,³⁸ (iii) appeal to the Head of State against a surcharge imposed by the Registrar,³⁹ (iv) appeal to the Registrar as regards a dispute referred by the same to an arbitrator,⁴⁰ and (v) an appeal against the directions of the Registrar for the disposal of surplus assets in cases of dissolution by the same or voluntary winding up.⁴¹ There is absence of provision for appeals against the dissolution or cancellation of a society or board by the Registrar.

III ADMINISTRATION AND GOVERNANCE

A Umbrella Organisation

The coordinating body of CSOs in the country is the *Samoa Umbrella for Non Governmental Organisations* (SUNGO), a voluntary union which is not established by statute. The vision of SUNGO is to work in partnership with the national Government in the promotion and facilitation of quality development and improved lifestyle for citizens of the country. Its broad objectives and programs revolve around good governance and management, policy and advocacy, institutional strengthening, promotion, communication and membership.⁴² SUNGO is currently playing an important role in building management and service capacity of affiliated members, governance, and facilitating the input of CSOs into government policy. Current official affiliation to SUNGO is set at 98 members with an additional two expressing interest for membership. Most of its members are either village or church-based.

B Management

³⁶ *Charitable Trusts Act*, s.18

³⁷ *Incorporated Societies Act*, s.11

³⁸ *Cooperative Societies Act*, s.45

³⁹ *ibid*, s.47

⁴⁰ *ibid*, s.49

⁴¹ *ibid*, s.26

⁴² www.piango.org/samoa

This section will briefly set out the types and forms of internal management bodies that exercise executive and management functions over the affairs of incorporated or statutory organisations. Of focus will be those specified under general legislation and those specifically established by special statute.

1 General

(i) Charitable Trusts Act

Management is done by a Board of Trustees consisting of trustees or persons representing other societies being members of the incorporated board.

(ii) Incorporated Societies Act

Management and executive functions fall under the mandate of the management committee or committees as per a society's constitution and rules.

(iii) Cooperative Societies Act

The functions and powers of a society are exercised by a management committee or number of committees as prescribed in its constitution and bylaws.

2 Special

(i) Robert Louis Stevenson Foundation Act 1991

Whilst the Act is administered by the Department of Education, management of affairs of the Foundation is the responsibility of Samoan Directors appointed by the Head of State.⁴³

Samoa Polytechnic Act 1992

The supreme governing body is the Council of the Polytechnic⁴⁴ with other functions to be performed by a board or special committees as may be appointed by the Council from time to time.⁴⁵

National University of Samoa Act 1997

The governing body of the University is the Council⁴⁶ which exercises its functions through bodies which it establish, viz. the Executive Committee⁴⁷ and the Senate.⁴⁸ Additional powers are conferred on the Council to establish from time to time ‘*such other committees, boards or other bodies consisting of such persons, whether or not members of the Council...*’⁴⁹

Oceania University of Medicine (Samoa) Act 2002

The body with ultimate authority over affairs of the University, management or otherwise, is the Council⁵⁰ which is similarly empowered to establish such boards or committees to discharge its functions.

C Powers & Duties

Outlined below are the powers of management or governing bodies of societies or institutions registered under general legislation or incorporated by virtue of

⁴³ see s.16

⁴⁴ s.7

⁴⁵ s.15

⁴⁶ ss.3(3)&7

⁴⁷ s.27(1)

⁴⁸ s.23

⁴⁹ s.27(2)

⁵⁰ ss.6&10

special legislation. Whilst the powers prescribed in general legislation are broad, detailed powers and functions are normally set out in the rules or constitutions of registered societies. These are as follows:

1 General Legislation

(i) Charitable Trusts Act

Section 14 stipulates that a Board that is incorporated ‘*shall have perpetual succession...and (subject to this Act and to the rules and other documents providing for the constitution of the Board) shall be capable of holding real and personal property of whatsoever nature and whether situated in Western Samoa or elsewhere, and of suing and being sued, and of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer*’. A Board of Trustees is similarly empowered to dedicate trust property for any public purpose,⁵¹ sell or exchange any part thereof,⁵² and the power to purchase any property whether situated in Samoa or overseas.⁵³

(ii) Incorporated Societies Act

Section 9 states that upon the issuing of a certificate of incorporation, the subscribers to the rules of the society and subsequent members will become ‘*a body corporate...having perpetual succession and a common seal, and capable forthwith, subject to this Ordinance and to the said rules, of exercising all the functions of a body corporate and of holding land*’.

(iii) Cooperative Societies Act

By virtue of s.8 of the Act, the registration of a society renders it a body corporate ‘*with perpetual succession and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings, and to*

⁵¹ s.22(1)(a)

⁵² s.22(1)(b)

⁵³ s.22(1)(c)

do all things necessary for the purpose of its constitution'. A society can similarly make loans to another society subject to consent of the Registrar,⁵⁴ receive deposits and loans from non-members,⁵⁵ and invest its funds in approved schemes including securities.⁵⁶

2 Special Legislation

(i) Robert Louis Stevenson Foundation Act

Its powers derive from its statutory objects which includes the raising of funds for its approved objects, and the making of gifts or loans to government or any other person for any charitable purpose.⁵⁷

(ii) Samoa Polytechnic Act

Prescribed powers of the Board of the institution are wide and numerous, which includes the power to borrow and invest moneys of the same, act as trustee of any property or legacy, enter into contracts, and determine the terms and conditions of any association or cooperation between the polytechnic and any institution.⁵⁸ It is similarly empowered to *'acquire by gift, bequest or devise any property...and to agree to and carry out the conditions of such gift bequest or devise'*.⁵⁹

(iii) National University of Samoa Act

Powers of the Council are diverse and cover almost every area impinging on the functions and operation of the University. This includes the power to raise

⁵⁴ s.30(1)

⁵⁵ s.31

⁵⁶ s.33

⁵⁷ s.4

⁵⁸ s.6

⁵⁹ s.28

funds or procure contributions to University funds, guarantee loans, impose fees, invest funds, and participate in companies or private enterprises.⁶⁰

(iv) *Oceania University of Medicine (Samoa) Act*

As an institution of higher learning, powers of the Council are almost identical to that under (iii) above. A noticeable distinction though is that powers prescribed in the Act are focused on the medically-oriented objects of the institution. The provisions are however unclear on how or whether the Council is to invest funds of the University, make loans or raise revenue for financing its objects and programs so as to be self-reliant.

D Financial Audit

1 General Legislation

The Registrar is empowered to audit or cause to be audited and inspect the accounts, books, papers or securities of societies registered under the *Cooperative Societies Act*⁶¹ and *Incorporated Societies Act*.⁶² Whilst audit requirements and processes are to be instituted by the Registrar under the *Cooperative Societies Act*, the *Incorporated Societies Act* instead requires annual audit statements to be prepared by a society and submitted to the Registrar. The particulars of an audit statement will include the examination of overdue debts, valuation of assets and liabilities,⁶³ examination of income and expenditure, mortgages, charges and securities of a society at the close of a financial year. No similar approach vis-à-vis audit requirement is however found in the *Charitable Trusts Act* which is rather silent.

2 Special Legislation

⁶⁰ s.26(2)

⁶¹ s.35

⁶² s.22

⁶³ *Cooperative Societies Act*, s.35(2); *Incorporated Societies Act*, s22

As institutions of higher learning with potentially huge operating budgets, strict audit requirements are imposed under the *National University of Samoa Act*⁶⁴, *Oceania University of Medicine (Samoa) Act*,⁶⁵ and the *Samoa Polytechnic Act*.⁶⁶ The *Robert Louis Stevenson Foundation Act* similarly requires the preparation of annual reports.⁶⁷

E Distribution of Profit & Gains

This issue applies principally to membership organisations registered under legislation of the country. The principal issue is whether legislation permits the distribution of the income and profit of registered societies, and if so, who or what class of persons ought to be the beneficiaries.

(i) Cooperative Societies Act

Section 34 of the Act permits the distribution to members of the balance of any profit made in a financial year after a quarter ($\frac{1}{4}$) of the total profit made is carried to its reserve fund. Note however that no such dividend or bonus is to be made unless and until the society's balance sheet and amount of dividend payable to members is certified and approved respectively by the Registrar. A society is also given the option of contributing '*an amount no exceeding 10 per cent of the remaining net profit to any charitable purpose or to a common good fund*'.⁶⁸ The latter testifies to the fact that cooperative societies are not established for charitable purposes *per se*. However, the prescribed ceiling of 10% acts as a constraint on societies that may wish to make charitable donations of larger amounts. Such matters should be left to be decided by resolution of members.

(ii) Incorporated Societies Act

⁶⁴ s.43

⁶⁵ s.23

⁶⁶ s.36

⁶⁷ s.11

⁶⁸ s.34(2)

The Act prohibits pecuniary gain to members as the objects of any registered society must not be one for pecuniary gain.⁶⁹ Private benefit by way of pecuniary gain is however defined as excluding pecuniary gain earned by a member of the society by way of salary as servant or officer of the same,⁷⁰ or a gain to which such member would be equally entitled if he or she were not a member.⁷¹ Any pecuniary gain earned by such society is likewise excluded as gain for private benefit prohibited under the Act provided the same is not for distribution between members as dividend or bonus.⁷²

(iv) *Robert Louis Stevenson Foundation Act*

No member of the foundation is to receive any pecuniary gain except in the event of such gains being received by the member by way of salary as a servant or officer of the foundation. Similarly, it will not be considered pecuniary gain if the same is one to which a member of the foundation would be equally entitled if he were not a member.⁷³

F Conflict of Interest & Accountability

(i) *Charitable Trusts Act*

There is absence of provision that expressly regulates matters amounting to conflicts of interest. However, it is common practice to leave such matters to be governed either by the instrument creating the trust or the provisions of the *Trustee Act 1975*. As a matter of public interest, trust boards that are incorporated for charitable purposes must be made accountable as regards their operations and dealings. Thus, s.37 of the Act empowers the Attorney-General, *'from time to time, as he in his discretion may think fit, to examine and inquire into all or any charities in Western Samoa, and to examine and inquire into the nature and objects, administration, management, and results thereof,*

⁶⁹ s.3

⁷⁰ s.4(d)

⁷¹ s.4(e)

⁷² s.4(a)

⁷³ s.3(a)&(b)

and the value, condition, management, and application of the property and income belonging thereto’.

(ii) Incorporated Societies Act

Matters of conflicts of interest are left to be regulated by the rules of a registered society as can be implied from s.5 of the Act which requires a society to have rules regulating various matters including appointment of officers, control and investment of funds, borrowing powers, and ‘*such other matters as the Registrar may require to be provided for in any particular instance*’. A conflict of interest situation may potentially arise in the event of execution of contracts by officers of a society on behalf of the latter as the safeguards prescribed in s.14 fail to address this issue. No accountability provisions by way of random inspections for instance are found in the Act. This most probably is attributed to the fact that such matters are left to be addressed in the rules. In whole, the Act is relatively deficient as regards accountability and conflicts of interest mechanisms.

(iii) Cooperative Societies Act

As is the case in (ii) above, the Act leaves matters relating to conflicts of interest to be regulated by bylaws of a society. However, there is provision for the intervention of the Registrar who may⁷⁴

of his own motion, and shall on the application of a majority of the Committee, or of not less than one-third of the members of a registered society, hold an inquiry or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working, and financial condition of a registered society; and all officers and members of the society shall furnish such information in regard to the affairs of the society and produce the cash in hand and such books, accounts, papers and securities of the society as the Registrar or the person authorised by him may require.

⁷⁴ s.37

(iv) *National University of Samoa Act*

Section 11 of the Act requires that *'a member of the Council or of a committee of the Council who has an interest in a matter being considered or about to be considered by the Council or the committee, as the case may be, shall, as soon as possible after the relevant facts have come to the members knowledge, disclose the nature of the interest at a meeting of the Council or of the committee'*.

(v) *Oceania University of Medicine (Samoa) Act*

Any equivalent of s.11 under (iv) above is not found within provisions of the Act. However, the University Council in the performance of its functions and exercise of powers must *'ensure that proper systems are established for the coordination of and accountability for activities within the University and ensure proper standards of integrity, conduct and concern of the wellbeing of the students and staff of the University....'*⁷⁵

(vi) *Robert Louis Stevenson Foundation Act*

Apart from the requirement for submission of annual reports as per s.11, the Act is generally silent on this issue.

(vii) *Samoa Polytechnic Act*

Section 16 requires that *'a member of the Board, or of a committee who has an interest in a matter being considered or about to be considered by the Board or committee, shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board or committee'*.⁷⁶ Similarly, the Board is required to prepare a Charter for the

⁷⁵ s.13

⁷⁶ It is obvious that s.11 of the *University of Samoa Act* outlined in (iv) above is a replication of this provision

institution which must include *'codes or principles of conduct or administration to be observed in the management of the affairs of the institution'*.⁷⁷

IV PROMOTION OF CAUSE AND BENEFITS

This part briefly looks at how CSOs may fundraise, as well as tax exemption and other benefits, fiscal or otherwise, to which they are entitled by virtue of statutory provisions. Whilst CSOs can engage in numerous fundraising activities, there are some that require special permits or authorisation as prescribed by statute. This is the category that will be discussed in section (A) below.

A Fundraising Activities & Privileges

(i) National Lotteries Act 1978

Section 27 of the Act provides that the *'net proceeds of lotteries shall be distributed for charitable, philanthropic, educational, sporting or cultural purposes or for other purposes beneficial to the community....'* Thus, whilst CSOs will not directly participate under this Act, they may stand to benefit from s.27 as potential recipients of distributed proceeds.

(ii) Gaming Act 1978

By virtue of s.16, the Commissioner to whom applications for permits are to be made *'shall not grant a permit...unless he is satisfied that the profits from the games...are to be applied only for religious, charitable, cultural or sporting purposes or other purposes beneficial to the community'*. An underlying objective of the Act therefore is for the promotion of gaming activities geared towards raising of funds for the purposes specified.

(iii) Film Control Act 1978

⁷⁷ s.27

Fees payable for a licence to exhibit films may be waived or remitted by the Board ‘*in the case of any film exhibition held for any charitable educational or public purpose*’.⁷⁸ This waiver only applies to fees and not to other censorship controls in relation for instance to the content of a film that may be intended for exhibition for a charitable educational or public purpose.

B Tax Exemption and Deductions

(i) Stamp Duty Act 1932

The legislation provides no specific benefit to which CSOs are entitled. However, incorporated societies are entitled to be exempted from stamp duty under the *Cooperative Societies Act*⁷⁹ and *Incorporated Societies Act*.⁸⁰ Whilst exemption under the latter is automatic, this is not the same under the *Cooperative Societies Act* as action of the Head of State is required to give effect to such exemption.

(ii) Customs Tariff Act 1977

The Act does not expressly provide for incentives or benefits to which CSOs may be entitled. Section 3(2) nonetheless empowers the Ministers to exercise discretion in setting the appropriate rate of duty or exemption on goods or a class of goods imported into the country. Note however that this provision does not apply with direct or automatic effect to the cause of CSOs, charitable or otherwise. In other words, no specific reference is made of goods imported for charitable or related purposes. Worst still, no application processes or procedures, if at all applicable, are prescribed for invoking s.2(3) of the Act.

(iii) Income Tax Act 1974

⁷⁸ s.10(5)

⁷⁹ s.55

⁸⁰ s.34

As is typical of any jurisdiction, this statute is more extensive vis-à-vis the cause of CSOs and the recognition of their significance as alternative development partners. The starting basis is s.7(1) which sets out the heads of income that are exempted from taxation. These include

...(g) income (not being income of the kind referred to in paragraph (h) hereof) derived by trustees in trust for charitable purposes, or derived by any society or institution established exclusively for such purposes; (h) income derived directly or indirectly from any business carried on by or on behalf of or for the benefit of trustees in trust for charitable purposes within...Samoa, or derived directly or indirectly from any business carried on by or on behalf of or for the benefit of any society or institution established exclusively for such purposes...; (i) income derived by any society or association, whether incorporated or not, which is, in the opinion of the Commissioner, established substantially or primarily for the purpose of promoting any amateur game or sport if that game or sport is conducted for the recreation or entertainment of the general public...; (j) income derived by any society or association whether incorporated or not, which is, in the opinion of the Commissioner, established substantially or primarily for the purpose of... beautifying or developing...amenities for the general public...(m) income derived by any trustee in trust for any sick, accident, or death benefit fund, not being income derived directly or indirectly from any business carried on by or on behalf of or for the benefit of that trustee....

The extensive use of **charitable purposes** has necessitated the need to incorporate a definition of the phrase. Subsection (3) of the above provision thus sheds light on its use by stating that

the expression “charitable purposes” means objects that are of a public character...[that] are not carried on for private pecuniary profit, and are exclusively any one or more of the following: (i) the advancement of religion, (ii)...advancement of education, (iii)..relief of poverty, sickness and disability [and] (iv) the promotion of any other object beneficial to the community including any other object which is charitable according to Samoan custom and usage’.

Section 61 of the Act further provides for special exemption in the case of charitable donations by way of gifts. Thus, 'every taxpayer shall be entitled in respect of gifts for charitable purposes to a deduction by way of special exemption from his residual assessable income of \$52'. It is unclear whether **gifts** only refer to gifts in kind or also includes cash donations. A crucial point to note however is that the incentive offered is way too low to attract charitable donations from the public or business sector, thus, more of a disincentive or impediment towards charitable causes.

As host of the 2007 South Pacific Games, an amendment was enacted in 2003⁸¹ to provide for special deduction for cash donations towards hosting of the game. Thus, s.62A provides:

[E]very taxpayer shall be entitled to a deduction by way of special exemption from the taxpayer's residual assessable income at the rate of 200% of the amount of any cash given by way of gift made by the taxpayer to the South Pacific Games Authority.

Certain conditions for qualification are however prescribed, including payment into a specified account by a certain deadline, and donation of an amount not less than \$104.⁸²

(iv) *Value Added Goods and Services Tax 1992/93*

By virtue of s.15(a), the supply of donated goods by a any non-profit body is exempted from tax. It is however unclear whether goods and services **produced** as opposed to **donated to** and supplied by a non-profit body will equally be captured by that provision. Similarly, it remains unclear whether the donor of goods or services will be entitled to some benefit such as that prescribed under s.61 of the *Income Tax Act*. Moreover, it needs to clear whether goods and

⁸¹ *Income Tax (2007 South Pacific Games Donations) Amendment Act 2003*

⁸² s.62A(2)

services purchased or engaged by a non-profit body will be exempted from tax at the point of sale.

For purposes of clarity, s.2 defines a non-profit body as meaning '*any society, association, or organisation, whether incorporated or not which is carried on other than for the purposes of profit or gain to any proprietor, member, or shareholder and which is, by the terms of its memorandum, articles of association, rules, or other document constituting or governing the activities of that society, association, or organisation, prohibited from making any distribution whether by way of money, property, or otherwise howsoever, to any such proprietor, member, or shareholder*'.

(v) *Estate and Gift Duties Act 1978*

Duty on dispositions of property are exempted in cases of a '*gift creating a charitable trust, or establishing any society or institution exclusively for charitable purposes, or any gift in aid of any such trust, society or institution*'.⁸³ Likewise, duty will be exempted on any gift to a public institution or class of public institutions as approved by Cabinet.⁸⁴

V CONCLUSION

The legislative framework in Samoa is adequate for creating an environment conducive to an effective and functioning civil society. But this must not be taken to overshadow existing defects pertaining to the enhancement of their functions and the relationship between such bodies with the Government and public at large. Some of such noted defects are fundamental.

⁸³ s.63(a)

⁸⁴ s.63(h)

Firstly, there is need for more transparency and accountability mechanisms so as to rectify the public perception of CSOs as very secretive organisations and fundraisers. Public scrutiny of the financial affairs of organisations, in particular those funded by external donor agencies is imperative as currently there is absence of a mandatory requirement for financial statements to be published and made accessible to the public. The auditing of accounts only satisfies the relationship between an organisation and the Registrar or its equivalent authority but not necessarily between the former and the public or Government.

Secondly, incentives within the tax regime devised to drive interest from private donors towards charitable or related causes are at present less attractive. Whilst the focus and emphasis is on a society as the beneficiary, either by virtue of its own activities or through external assistance and donations, there is little to acknowledge the donor as benefactor and source of donation. In other words, the present tax regime places more emphasis on exemptions for CSOs than deductions of commensurate value for donors. Such approach would in effect create less motivation in the business community and private donors to continually support societies established principally for charitable, benevolent public benefit or such other similar causes.

Thirdly, with a flourishing CSO community characterised by a proliferation of organisations, both incorporated and unincorporated, it is high time a central regulatory body be established with statutory powers and functions. There certainly is need for such a body with *the teeth to bite* so as to ensure the CSO community is well coordinated. The piecemeal approach within the current legislative framework is a potential source for a disintegrated and uncoordinated environment leading to chaotic situations. A possible function of such body is to act as central liaising channel between the Government and CSOs - thus, a partnership enhancement agent. And in that end, it is a role of the body to translate the Government's community development policies into working programs for implementation by CSOs with focus on that area. This would operate to rectify the current situation characterised by a lack of

compatibility or a perceived *miss match* between the Government's development policies, both short and long term, and development programs of CSOs. In total therefore, the absence of a statutory central coordinating body for CSOs and a legal or regulatory framework setting out the jurisdictional or administrative aspects of the supposed partnership between Government and CSOs must be rectified.

Fourthly, as a country with an *import-oriented* economy as is common throughout the Pacific, it is foreseeable that CSOs in the implementation of their programs will mainly use or rely on imported material or goods. These will either be used for logistical purposes to expedite their operations or for use that will directly benefit for instance a recipient community. Given such imports fall under customs legislation, it is imperative that the charitable or related causes of societies be afforded some recognition manifested in exemptions. Unfortunately, there is no duty exemption expressly prescribed within the present legislation for goods or material imported for charitable or related purposes.

Fifthly, there is absence of provisions for appeal against the dissolution or cancellation of a society. This mainly applies to *general legislation* as the principal legislative framework governing CSOs. Under the current legislative framework, appeals can only be made in relation to the decision of the Registrar in refusing to register trustees or a society, or an amendment of a society's rules, (ii) an order of the liquidator or Registrar relating to the process of liquidation,⁸⁵ (iii) a surcharge imposed by the Registrar,⁸⁶ (iv) the decision in a dispute referred by the Registrar to an arbitrator,⁸⁷ and (v) the directions of the Registrar for the disposal of surplus assets in cases of dissolution by the same or voluntary winding up.⁸⁸ The exercise of discretion by the Registrar creates room for arbitrariness in the dissolution or cancellation of a society, aggravated in part by the absence of prescribed grounds for the exercise of such discretion. Moreover, whilst the Registrar may reinstate to the register a dissolved society

⁸⁵ *Cooperative Societies Act*, s.45

⁸⁶ *ibid*, s.47

⁸⁷ *ibid*, s.49

⁸⁸ *ibid*, s.26

under the *Incorporated Societies Act*, there is no equivalent provision within the *Charitable Trusts Act* or *Cooperative Societies Act*. This supports the necessity of having appeal provisions that would be invoked in the event the dissolution or cancellation by the Registrar of a society or trust is not done on meritorious grounds worthy of legal sanction.

Other factors that might need review, and which will be stated in brief, include the vagueness in the *Incorporated Societies Act* in setting out the objects for qualification for registration; the potential abuse of *charitable purpose* status by mere registration as s.13 of the *Charitable Trusts Act* stipulates that a certificate of registration does not operate as evidence of proof of the charitable status of a society; the need for a register of societies and members thereof to be kept by the Registrar for accessibility, logistical, convenience and centralisation reasons; and the need for stamp duty exemption to be rendered to societies registered under the *Charitable Trusts Act*, similar to the exemption under the other two Acts.⁸⁹

Finally, the ceiling placed on any society registered under the *Cooperative Societies Act* that resolved to contribute towards a charitable or common good purpose operates as a constraint on what is otherwise a good intention. Section 34(2) of the Act restricts the rights of members of a society to give to charitable causes, in particular with regard to the maximum donation that they would on their own accord, free will and by common resolve want to donate. There are cooperatives that are pro-charitable in their yearly events and fundraising drives only to be constrained by the effects of the said provision.

****the author is solely responsible for any errors found in the content hereof.**

⁸⁹ Societies registered under the Cooperative Societies Act and Incorporated Societies Act enjoy a stamp duty exemption

Reference

Constitution of the Independent State of Samoa 1960
Charitable Trusts Act 1965
Cooperative Societies Act 1952
Customs Act 1977
Customs Tariff Act 1977
Estate & Gift Duties Act 1978
Film Control Act 1978
Gaming Act 1978
Income Tax Act 1974
Income Tax (South Pacific Games Donations) Amendment Act 2003
Incorporated Societies Act 1952
National Lotteries Act 1978
National University of Samoa Act 1997
Newspaper & Printers Act 1992/3
Oceania University of Medicine (Samoa) Act 2002
Robert Louis Stevenson Foundation Act 1991
Stamp Duty Act 1932
Value Added Goods & Services Tax Act 1992/3
Western Samoa Polytechnic Act 1992/93