



## Customs (Aviation Transport Development) Regulations 2012

### SAMOA

#### Arrangement of Provisions

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PURSUANT to section 163A of the Customs Act 1977, I, TUI ATUA TUPUA TAMASESE EFI, Head of State, acting on the advice of Cabinet, MAKE the following regulations:-

DATED this .....18<sup>th</sup>..... day of.....June.....2012

.....*Tui Atua Tupua Tamasese Efi*.....  
(Tui Atua Tupua Tamasese Efi)  
HEAD OF STATE

## REGULATIONS

**1. Citation and commencement** – (1)These Regulations may be cited as the Customs (Aviation Transport Development) Regulations 2012.

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

**2. Interpretation** – In these Regulations, unless the context otherwise requires:

“Act” means the Customs Act 1977;

“applicant” means a person applying for approval of a qualifying project under section 163A of the Act;

“approved goods” means approved goods listed in regulation 4(1)(a) in relation to an aviation development project;

“authorised officer” means an officer appointed under regulation 6;

“aviation development project” means a qualifying project approved pursuant to section 163A of the Act that would contribute favourably to the aviation transport of Samoa; and “qualifying project” has the same meaning;

“Comptroller” means the Comptroller of Customs, and includes the acting Comptroller of Customs;

“investment committee” means the committee appointed under regulation 3(1)(b).

**3. Criteria and application for aviation development project** – (1)The following criteria for aviation development project are prescribed for the purpose of section 163A of the Act:

- (a) the project has been assessed and recommended by the Chief Executive Officer to the investment committee for further assessment under paragraph (b); and
  - (b) assessed by an investment committee appointed by the Minister—
    - (i) to be beneficial to the economy of Samoa; and
    - (ii) to be in the public interest; and
    - (iii) that the project will establish a new travel route or re-establish an old route no longer serviced by an air transport provider; and
    - (iv) that the project is new to Samoa; and
    - (v) that the applicant has no other aviation transport operations in any other country.
- (2) An application for aviation transport project must be sent to the Chief Executive Officer for processing.
- (3) An application for aviation transport project must contain:
- (a) the full name, address and present occupation or main business of the applicant, and, if the applicant is a public or private company, full details regarding the officers and shareholders of the company and its registered office; and
  - (b) the full names of the principals or intended directors, their addresses, bank and other financial references, previous background and experience in aviation transport operations; and
  - (c) the nature of the applicant’s project, the resulting aviation service, the anticipated volume of operation during each of the first 10 years of operation, where and how the service is to be marketed, and the price at which the applicant

expects to be able to market the aviation service;  
and

- (d) the estimated sources, amounts, from cash or otherwise and purposes of the capital intended to be expended on the qualifying project during each of the first 10 years of operation; and
- (e) a description and estimation of the cost of physical structures to be erected or added, and of capital equipment to be purchased; and
- (f) the nature of any land title applying to that site held or expected to be obtained by the applicant, and if an applicant's project is to be built upon customary land, a copy of the relevant lease agreement where relevant; and
- (g) the terms and conditions under which workers will be employed, including salaries, wages and any provision for amenities and housing of the workers, and the number of Samoans and of other workers intended to be employed initially and during each of the first 10 years of operation and description of the duties of workers; and
- (h) details of goods that the applicant claims required for the qualifying project for which the applicant seeks exemption from customs duty wholly or partially—
  - (i) whether if the goods is used wholly or partially for that purpose; and
  - (ii) if only partially used, the extent of use for the goods;
- (i) if the nature of the applicant's project is a service—
  - (i) the date on or before the service is set to commence; and
  - (ii) the estimated service cost analysis including operating costs and a copy of a service marketability survey; and
  - (iii) for a domestic air service, the expected frequency of flights;
- (k) any other information or particulars, as the Chief Executive Officer may require.

(4) An application may be refused if the Minister is satisfied that the granting of the approval may affect the revenue of

Government to a degree that is not in the national interest, or for any other reason.

(5) The investment committee may regulate its own procedures.

**4. Criteria and application for approved goods** – (1) The following criteria for approved goods are prescribed for the purpose of section 163A of the Act:

(a) approved goods apply only to the following capital goods used solely for a qualifying project—

(i) airplanes of an unladen weight not exceeding 15,000kg and designed for the commercial transport of persons as described in tariff heading 8802.3010 of HS 2007;

(ii) parts of aeroplanes described in subparagraph (i);

(iii) aviation gasoline, aviation kerosene and jet fuel included under tariff headings 2710.1120 and 2710.1130 of HS 2007; and

(b) approved goods are assessed by the investment committee to be goods to which paragraph (a) applies.

(2) A person who seeks to import any approved goods must apply in writing to the Chief Executive Officer.

(3) An application for approved goods must contain the following:

(a) a full list of goods to be imported;

(b) sufficient information or description of goods such as the harmonised system description so as to assist in determining the applicable tariff rate;

(c) a detailed description of proposed use of goods; and

(d) written confirmation that the goods are being imported solely to be used on a qualifying project;

(e) an undertaking that the full duty payable for the goods shall be paid if they are later sold within Samoa, or used by any person other than the approved person for any other purpose;

(f) any other information or particulars required by the Chief Executive Officer.

(4) When assessing an application, the Investment Committee:

- (a) may require further information of the goods from the Chief Executive Officer or the applicant; and
- (b) after making its assessment on the goods, must recommend to the Chief Executive Officer to—
  - (i) accept the application for approved goods in whole or in part; or
  - (ii) decline the application; or
  - (iii) seek further details if required.

(5) An application may be refused if the Chief Executive Officer is of the opinion that the granting of the approval in whole or in part will affect the revenue of Government to a degree that is not in the national interest, or for any other reason.

**5. Conditions and restrictions for goods imported under section 163A** – (1) Import duty concessions granted under section 163A of the Act may be granted subject to the following conditions:

- (a) an approved person shall, for each qualifying project carried on by that person, keep, to the satisfaction of the Comptroller and the Chief Executive Officer—
  - (i) full records and accounts of all financial transactions, assets, liabilities and funds; and
  - (ii) full records and inventories of all goods imported by them into Samoa; and
- (b) where the qualifying project relates to an expansion of a current business operation, the records, accounts and affairs of the matters referred to in paragraph (a) and which relate to expansion shall be kept wholly separate from the original business activities at all times;
- (c) all approved goods imported for a qualifying project shall be kept in a secure manner and shall be subject to conditions that may be imposed by an authorised officer to ensure the security of the stored approved goods;

- (d) any authorised officer shall be entitled during reasonable hours to enter and inspect the premises where a qualifying project is or has been conducted, and to inspect and take copies of the records pertaining to that project for the purpose of ascertaining whether the provisions of these Regulations are being complied with;
- (e) without affecting the power of the Chief Executive Officer under section 163A, exempting goods mentioned under regulation 4(1) (a) (ii) may cease after 3 years from the approval of the goods mentioned under regulation 4(1) (a) (i);
- (f) any other condition for any approved goods that the Chief Executive Officer of the Ministry of Finance deems appropriate.

(2) No approved goods with exemption or relief from any duty under section 163A of the Act shall be sold, given away or otherwise disposed of except:

- (a) with the prior written approval of the Chief Executive Officer of the Ministry of Finance; or
- (b) where an assignee of a business acquires the approved goods as part of the assignment; or
- (c) upon the approved person or relevant assignee as the case may be paying to the Comptroller customs duty on the value of the goods sold, given away or otherwise disposed of, as assessed at the date of the sale, gift or other disposal, less any customs duty already paid for the approved goods and not refunded.

(3) Duty previously exempted under section 163A of the Act becomes due and payable if an approved person or relevant assignee within 5 years of commencement of its operation or receiving import duty exemption or any other longer time frame as determined by the Chief Executive Officer:

- (a) ceases business operations; or
- (b) fails to meet the criteria or conditions provided in these Regulations; or
- (c) the requirement or condition upon which import duty assistance was initially granted has not been complied with.

**6. Authorised officers** – (1) The Comptroller, the Chief Executive Officer of the Ministry of Commerce, Industry and Labour or the Chief Executive Officer of the Ministry of Finance may appoint officers in his or her Ministry as authorised officers for the purpose of these Regulations.

(2) An authorised officer shall not inspect any premises or records pertaining to any qualifying project or approved goods unless the officer is authorised in writing by the Chief Executive Officer of the Ministry of Finance or the Comptroller.

**7. Offences** – (1) A person importing approved goods in respect of an aviation development project who:

- (a) fails to comply with these Regulations; or
- (b) obstructs an authorised officer when carrying out an inspection under regulation 5(1) (d),–

commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 1 year, or both.

(2) A person who (otherwise than in accordance with these Regulations) sells, disposes of, possesses or uses any approved foods imported under section 163A of the Act for use in relation to a qualifying project commits an offence, and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding 500 penalty units, and the goods are forfeited to the State.

(3) A person who knowingly supplies any false or misleading information in relation to any application made under these Regulations commits an offence, and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding 500 penalty units and the goods are forfeited to the State.

(4) A person who fails to comply with a provision of these Regulations commits an offence and is liable on conviction to a fine not exceeding 250 penalty units.

(5) If a body corporate commits an offence under these Regulations with the consent of, connivance by or because of neglect by any individual, the individual commits the same offence if at that time the individual is a director, manager, or other officer of the body corporate, or the individual is



purporting to be acting as a director, manager or other officer of the body corporate.

(6) Lack of knowledge that the offence was being committed may be raised as a defence by the individual who commits any offence under subregulation (5).

**8. Transitional provision** – These Regulations apply to goods imported into Samoa on or after 1 May 2012.