



Western Samoa

Analysis

Title	3. Application of Act 4. Adjustment of rights and liabilities of parties to frustrated contracts 5. Repeal
1. Short title and commencement	
2. Interpretation	

1975, No. 3

AN ACT pertaining to the frustration of contracts.

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

[11 August 1975]

1. Short title and commencement—(1) This Act may be cited as the Frustrated Contracts Act 1975.

(2) This Act shall come into force on a date to be appointed by the Head of State, acting on the advice of Cabinet, by Order.

2. Interpretation—In this Act the expression “Court” means, in relation to any matter, the Court or arbitrator by or before whom the matter falls to be determined.

3. Application of Act—(1) This Act shall apply to all contracts, whether made before or after the commencement of this Act, except contracts in respect of which the times of discharge were before the 1st day of November 1944.

(2) This Act shall apply to contracts to which the Government is a party in the same manner as it applies to contracts between other persons.

(3) Where any contract to which this Act applies contains any provision that, on the true construction of the contract,—

(a) Is intended to have effect in the event of circumstances arising which operate or would, but for that provision, operate to frustrate the contracts; or

(b) Is intended to have effect whether or not such circumstances arise—

the Court shall give effect to the provision in the contract, and shall only give effect to section 4 to such extent (if any) as appears to the Court to be consistent with the provision in the contract.

(4) Where it appears to the Court that any part of a contract to which this Act applies can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the Court shall treat that part of the contract as it were a separate contract and had not been frustrated and shall treat section 4 as applicable only to the remainder of that contract.

(5) This Act shall not apply—

(a) To any charter party, except a time charter party or a charter party by way of demise, or to any contract (other than a charter party) for the carriage of goods by sea; or

(b) To any contract of insurance, except as provided by subsection (5) of section 4; or

(c) To any contract to which section 8 of the Sale of Goods Act 1908 (New Zealand) applies (which avoids contracts for the sale of specific goods which perish before the risk has passed to the buyer), or to any other contract for the sale, or for the sale and delivery, of specific goods, where the contract is frustrated by reason of the fact that the goods have perished before the risk has passed to the buyer.

4. Adjustment of rights and liabilities of parties to frustrated contracts—(1) Where a contract governed by the law of Western Samoa has become impossible of performance or been otherwise frustrated, and the parties to the contract have for that reason been discharged from the

further performance of the contract, the following provisions of this section shall, subject to section 3, have effect in relation to the contract.

(2) All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this Act referred to as the time of discharge) shall, in the case of sums so paid, be recoverable from him as money received by him for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable:

Provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the Court may, if it considers it just to do so having regard to all the circumstances of the case, allow him to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred.

(3) Where any party to the contract has by reason of anything done by any other party to the contract, in or for the purpose of the performance of the contract, obtained a valuable benefit (other than a payment of money to which subsection (2) applies) before the time of discharge, there shall be recoverable from him by the other party such sum (if any), not exceeding the value of the benefit to the party obtaining it, as the Court considers just, having regard to all the circumstances of the case and, in particular,—

- (a) The amount of any expenses incurred before the time of discharge by the party who has obtained the benefit, in or for the purpose of the performance of the contract, including any sums paid or payable by him to any other party in pursuance of the contract and retained or recoverable by that party under subsection (2); and
- (b) The effect, in relation to the benefit, of the circumstances giving rise to the frustration of the contract.

(4) In estimating, for the purposes of the preceding provisions of this section, the amount of any expenses incurred by any party to the contract, the Court may, without prejudice to the generality of those provisions, include such

sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the party.

(5) In considering whether any sum ought to be recovered or retained under the preceding provisions of this section by any party to the contract, the Court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustration of the contract, become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.

(6) Where any person has assumed obligations under the contract in consideration of the conferring of a benefit by any other party to the contract on any other person, whether a party to the contract or not, the Court may, if in all circumstances of the case it considers that it is just to do so, treat for the purposes of subsection (3) any benefit so conferred as a benefit obtained by the person who has assumed such obligations.

5. Repeal—The Frustrated Contracts Act 1944 (New Zealand) is hereby repealed as part of the law of Western Samoa.

BY AUTHORITY

D. SLADE, ACTING GOVERNMENT PRINTER, APIA, WESTERN SAMOA-1977



Samoa i Sisifo

Vaevaeina

Igoa

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| <ol style="list-style-type: none"> 1. Igoa pu'upu'u ma le amataga 2. Fa'amatalaina o upu 3. Faaaogaina o le Tulafono | <ol style="list-style-type: none"> 4. Fetu'utu'una'iga o aiā tatau ma nontaga o vaega e auai i ni feagaiga ua fa'aleaogāina 5. Mea ua soloia |
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1975, Nu. 3

O SE TULAFONO e faasino i le le faatanuuna o feagaiga.

UA FAIA e le Fono Aoaō Faitulafono a Samoa i Sisifo i totonu o le Palemene e fa'aapea:—[11 Aukuso 1975]

1. Igoa pu'upu'u ma le amataga—(1) E mafai ona ta'ua lenei Tulafono o le Tulafono o Feagaiga ua le Fa'ataunuuna 1975.

(2) O lenei Tulafono o le a amata ona fa'amamaluina i se aso o le a atofaina e le Ao o le Malo, e faia i luga o le fautuaga a le Kapeneta, i se Tulafono Fa'a-Poloaiga.

2. Fa'amatalaina o upu—I totonu o lenei Tulafono o le fuaitau "Fa'amasinoga" o lona uiga, i le itu i so o se mataupu, o le Fa'amasinoga po o le sui filifilia e faia le faai'uga o se fefinaua'iga po o ia lea ua lafo atu i ona luma le mataupu ina ia fai i ai se faai'uga.

3. Fa'aaogāina o le Tulafono—(1) O lenei Tulafono o le a tatau ona fa'aaogāina i feagaiga uma, tusa lava pe na faia a o lumana'i ai po o ua tuana'i ai le amataga o lenei Tulafono, a e vagana ai ni feagaiga o taimi e tuusa'olotoina ai sa i luma atu o le aso 1 o Novema 1944.

(2) O lenei Tulafono o le a tatau ona fa'aaogāina i ni feagaiga ia o lo'o avea ai le Malo o se vaega e auai i le faiga lava e tasi e pei ona fa'aaogāina i feagaiga i le va o nisi lava tagata.

(3) Afai o so o se feagaiga lea e fa'aaogā i ai lenei Tulafono o lo'o aofia ai so o se tu'utu'uga e fa'apea, i luga o le fausaga moni o le feagaiga,—

(a) Ua fa'amoemoeina ina ia i ai le fa'amamaluga pe a o'o ina alia'i mai ni uiga ua o'o i ai ia e fa'agaoioi po o le a ono fa'agaoioia, a e vagana ai mo lea tu'utu'uga, ina ia le faataunuina ai le feagaiga; po o

(e) Ua fa'amoemoeina ina ia i ai le fa'amamaluga tusa lava po o ua alia'i mai pe leai ni uiga fa'apena e o'o i ai—

o le a tatau i le Fa'amasinoga ona na tu'uina atu le fa'amamaluga i le tu'utu'uga i totonu o le feagaiga, ma o le a fa'ato'ā tu'uina atu le fa'amamaluga i le fuaiupu e 4 e o'o atu i le tulaga (pe a fai e i ai) e pei ona ua aliali atu i le Fa'amasinoga o le a talafeagai ai ma le tu'utu'uga i totonu o le feagaiga.

(4) Afai ua aliali atu i le Fa'amasinoga e fa'apea e mafai lelei ona tipi'ese so o se vaega o se feagaiga lea e fa'asino iai lenei Tulafono mai le vaega o lo'o totoe o le feagaiga, o se vaega lea ua faataunu'uina atoatoa a o lumana'i ai le taimi o le tu'usa'olotoina, po o na fa'apea ona fa'ataunu'uina a e vagana ai ona ua totogiina i le itu i lea vaega o le feagaiga ni vaega-tupe ia o lo'o, po o, e mafai ona fuafuaina le tonu i lalo o le feagaiga, o le a fa'atatauina lava e le Fa'amasinoga lea vaega o le feagaiga e peisea'i o se feagaiga e ese ai ma sa le'i faataunu'uina ma o le a faataatauina ai lava le fuaiupu e 4 e fa'apea e ono mafai ona fa'aaogāina i le na o le vaega o lo'o totoe o lea feagaiga.

(5) O lenei Tulafono o le a lē tatau ona fa'aaogāina—

(a) I so o se vaega auai fa'a-togipau a e vagana ai se vaega auai fa'a-togipau mo se taimi po o se vaega auai fa'a-togipau e ala atu i le fa'aliliuina o e esetete i luga o se mavaega po o se lisi, po o i so o se feagaiga (e ese ai na i lo se vaega auai fa'a-togipau) mo le felau'iga o oloa i le sami; po o

(e) I so o se feagaiga inisiua, a e vagana ai ona ua faia e pei ona aiaia e le fa'afuaiupu (5) o le fuaiupu e 4; po o

(i) I so o se feagaiga lea e fa'asino i ai le fuaiupu e 8 o le Tulafono o le Fa'atauina atu o Oloa 1908 (N. Sila) (lea ua 'alofia ai ni feagaiga mo le faataunuina atu o ni oloa faapitoa ia e fa'atāma'ia a o le'i o'o ina se'e atu le tulaga lamatia i lē na te fa'atauina), po o i so o se tasi lava feagaiga mo le fa'atauina atu, po o mo le fa'atauina atu ma le faao'oina atu, o ni oloa fa'apitoa, pe a fai ua le fa'ataunuina le feagaiga ona o le mea moni e fa'apea ua fa'atama'ia oloa a o le'i o'o ina se'e atu le tulaga lamatia i lē na te fa'atauina.

4. Fetu'utu'una'iga o aiā tatau ma noataga o vaega e auai i ni feagaiga ua lē fa'ataunuina—(1) Afai o se feagaiga o lo'o pulea e le tulafono a Samoa i Sisifo ua o'o ina ua lē ono mafai ona fa'ataunuina po o ua le fa'ataunuina i se tasi lava faiga e ese ai, ma ua tu'usa'olotoina vaega e auai i le feagaiga ona o lea mafuaga mai le toe fa'ataunu'uina o le feagaiga, o tu'utu'uga ua ta'ua i lalo o lenei fuaiupu o le a tatau lava, a e noatia ma fai fuafua i le fuaiupu e 3, ona i ai le fa'amamaluga i le itu i le feagaiga.

(2) O vaega-tupe uma na totogi atu po o e ono tatau ona totogi atu i so o se vaega e auai ina ia tusa ai ma le feagaiga a o lumana'i ai le taimi ua fa'apea ona tu'usa'olotoina ai vaega e auai (ua ta'ua i totonu o lenei Tulafono o le taimi e tu'usa'olotoina ai) o le a tatau lava, i le itu i ni vaega-tupe na fa'apea ona totogi atu, ona mafai ona toe maua mai ia te ia e ave'a o se tupe na maua e ia mo le fa'a-aogāina e le vaega e auai o ia lea na totogiina vaega-tupe, ma, i le itu i ni vaega-tupe e fa'apea ona ono tatau ona totogi atu, ona fa'amutaina le ono tatau ona totogi atu fa'apena:

A e vagana ai ona fa'apea, a fai na fa'aaluina e le vaega e auai o ia lea na fa'apea ona totogi atu i ai po o e ono tatau ona totogi atu i ai vaega-tupe ni tupe alu a o lumana'i le taimi o le tu'usa'olotoina i, po o mo le aano moni o, le fa'ataunu'uina o le feagaiga, e mafai e le Faamasinoga, pe afai e manatu o ia ua sa'o ma tonu ona faia fa'apena i le aloa'ia o uiga uma ua o'o i ai le mataupu, ona fa'atagaina o ia na te taofia pea po o, so o se itu e ono a'afia ai, ona na toe maua le atoa po o so o se vaega-tupe na fa'apea ona totogi atu po o e ono tatau ona totogi atu, a e lē o se aofa'iga o tupe e sili atu i lo tupe alu na fa'apea ona fa'aaluina.

(3) Afai o so o se vaega e auai i le feagaiga ua na mauaina, ona o so o se mea na faia e so o se tasi lava vaega e auai i le feagaiga, i totonu po o mo le itu tau le faataunuina o le feagaiga, se faamanuiaga taua (e ese ai na i lo le totogiina atu o se tupe, lea e faasino i ai le faafuaiupu (2) a o lumanai ai le taimi o le tu'usa'olotoina o le a ono tatau ona toe maua mai ia te ia e le isi lea vaega e auai se vaega-tupe (pe afai e i ai), e lē silia i lo le aogā o le faamanuiaga i le vaega e auai lea ua na mauaina sea mea, e pei ona ua finagalo le Fa'amasinoga e sa'o ma tonu, i le aloa'ia o uiga uma ua o'o i ai le mataupu ma, a e maise ai lava,—

(a) Le aofa'iga o so o se tupe alu na fa'aaluina a o lumanai ai le taimi o le tu'usa'olotoina e le vaega auai o ia lea ua na mauaina le fa'amanuiaga, i totonu po o mo le itu tau le fa'ataunu'aina o le feagaiga, e aofia ai so o se vaega-tupe na totogi atu po o e ono tatau ona totogi atu e ia i so o se tasi lava vaega auai ina ia tusa ai ma le feagaiga ma sa taofia pea po o e ono tatau ona toe maua e lea vaega auai e tusa ai ma le fa'afuaiupu (2); ma

(e) Le taunu'uga, i le itu i le fa'amanuiaga, o uiga ua o'o i ai ua pogai mai ai le le fa'ataunu'aina o le feagaiga.

(4) I le fuafua fa'atatauina, mo le a'ano moni o tu'utu'uga ua muamua atu o lenei fuaiupu, o le aofa'iga o so o se tupe alu na faaaluina e so o se vaega e auai i le feagaiga, e mafai e le Fa'amasinoga, e aunoa ma le fa'aleagaina ai o le tulaga aoao o ia tu'utu'uga, ona aofia ai se vaega-tupe e pei ona ua aliali mai o le a ono tatau ai i le itu i tupe alu i luga a'e ma i le itu i so o se galuega po o ni galuega na faia e lea lava vaega e auai.

(5) I le iloiloina pe mata e tatau ona toe maua mai po o le taofia pea so o se vaega-tupe e tusa ai ma tu'utu'uga ua muamua atu o lenei fuaiupu e so o se vaega e auai i le feagaiga, o le a tatau i le Fa'amasinoga ona na lē aloa'ia ai so o se vaega-tupe lea, ona o uiga ua o'o i ai o lo'o pogai mai ai le lē fa'ataunuina o le feagaiga, ua o'o ina tatau ona totogi atu i lea vaega e auai i lalo o so o se feagaiga o inisiua a e se'ia vagana ai ona sa i ai se tiute tauave ina ia inisiua na tu'uina atu e se tu'utu'uga ua fa'alia manino o le feagaiga ua le faataunu'aina po o e, po i lalo o so o se tulafono.

(6) Afai ua tau'aveina e so o se tagata ni tiute tau'ave i lalo o le feagaiga e avea ma tau'i o le faae'eina atu o se fa'amanuiaga e so o se tasi tagata e auai i le feagaiga i luga o so o se isi tagata, tusa lava po o se vaega e auai i le feagaiga pe leai, e mafai e le Fa'amasinoga, pe afai e tusa ai ma uiga uma ua o'o i ai le mataupu ua manatu o ia e faapea ua sa'o ma tonu ona faia fa'apena ona fa'atatauina mo le a'ano moni o le fa'afuaiupu (3) so o se fa'amanuiaga ua fa'apea ona fa'ae'eina atu e avea o se fa'amanuiaga na maua e le tagata o ia lea ua na tau'aveina ni tiute tau'ave fa'apena.

5. Mea ua soloia—O le Tulafono o Feagaiga ua le Fa'ataunu'uina 1944 (Niu Sila) ua soloia nei mai le avea ma vaega o le tulafono a Samoa i Sisifo. „