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PAPER for
CABINET

SECOND INFRASTRUCTURE ASSET MANAGEMENT PROGRAM
LAND ADMINISTRATION REFORM COMPONENT

BACKGROUND

The Government of Samoa (GoS) is implementing a Second Infrastructure Asset Management Program (SIAM-2) under credit from IDA. A component of SIAM-2 is the project described as C5.01 - Sustainable Management Land Administration and Survey .

The GoS has committed to land related reforms and to economic and public sector change as a firm basis for achieving the strategic objectives outlined in the Strategy for the Development of Samoa, 2002-2004. There is concern that the present system of land administration system will not provide a stable platform for meeting the development objectives of macroeconomic stability and private sector led growth. The system of land registration has been described as developing in an ad hoc manner since adopting the basic framework from New Zealand. The level of litigation, and the relatively high cost of land registry dealings, has raised doubt regarding the capacity of the existing deeds based system to provide the foundation for an active and efficient land market

CURRENT SITUATION

The Australian consultancy company carrying out the project has now produced a report on the land registration issues, a copy of which is attached. Two key issues have been identified. These are:

1. The lack of clarity in the present law regarding the effect of registration under the land Registration Act 1992/1993.

The current system in Samoa is a hybrid system which is an amalgam of old deeds registration principles with more modern title registration practices. This has given rise to confusion and conflicting Court judgments on the legal status of registered documents.

The Land Registration Act 1992/1993 provides, in effect, that if you do not register your document it will not give rise to a legal title. The current Act therefore protects purchasers from the effect of concealed encumbrances, but its operation is entirely negative. A defective conveyance will continue to be defective even after it has been registered, and a purchaser of land must always be prepared to accept the risk of paying money for a bad title. A number of recent Court judgments have supported this contention. This situation stands in contrast with that under a system of title registration such as Torrens title. A title registration law provides that if you do register your document it will give rise to a legal title. Under a title registration law a purchaser, without having to investigate the history of the title, or to consider the possibility of defective

conveyances, can merely inspect the current folio of the Land Register. This is sufficient for satisfaction that the proprietor named there is the owner and that the land is subject only to such interests as are recorded on that folio of the Register.

2. The need to upgrade the practices and procedures of the Land Registry.

The Registry has been operating in an environment where the practices and procedures are outdated, the records are deteriorating and adequate equipment is lacking. Measured against current best practice there is a lot of scope for improvement.

The common complaints amongst all users of the system were delays in registration of documents and difficulty in searching titles. The delays in registration are largely attributable to the lack of any system for monitoring and controlling the progress of matters lodged for registration and outdated and laborious registration practices.

The difficulty in searching title matters largely stems from the fact that the Register cannot be photocopied because of the damage that it causes to already fragile records. It is therefore necessary for persons searching title to laboriously transcribe by hand all the information in the Register. Searching is also made more time consuming by the lack of a direct link between the plan and the relevant title. It is necessary to search the original Register referred to on the plan and then follow the titles through to the current title. Other difficulties in this area stem from the fact that a Register folio does not disclose the identity of the land which may remain in a title after subdivision. The remaining land can be difficult to define and no plan may be available. Some existing plans are damaged and data is missing. While plans can be photocopied, A2 plans must be photocopied on separate A3 or A4 pages and taped together.

In terms of upgrading the registration system using modern methods and technology, the current s.17 of the Land Registration Act is a limiting factor as it requires registration to be effected by "the entry of a memorial signed by the Registrar in the Land Register". This would be inconsistent with a Register held on computer. In addition, the Land Registration Act 1992/1993 contains no provisions for the proof of title in Court by printouts from computer databases or imaging systems.

Having considered all the options for overcoming these and other issues, the report recommends as the most appropriate future strategy an option that operates at two levels – the first to enable the implementation of a computerised Registry and, at another level, to convert the system into Torrens Title. This option entails:

1. Upgrading the operational system. The upgrade would introduce a computer system and new procedures in order to:
 - Improve client services by providing the public with copies of the Register and with information regarding deeds and plans lodged but not yet registered.
 - Improve the management and control of unregistered documents.
 - Provide searchers with a direct link from the plan to the Register folio via a new folio number based on the lot and plan number.
 - Provide a mechanism to close off the deteriorating paper Register.
 - Simplify the content of the Register folio and the check of deeds.
 - Provide for the scanning of deeds and plans into a digital imaging system.

- Provide business reports and statistics to management.
 - Provide a registration system capable of delivering same day or, if warranted, 'while you wait' deed registration services.
2. Enacting new legislation to enable:
 - the Register to be held on computer rather than paper;
 - all other information to be available digitally;
 - simplified transaction forms to replace the current deeds; and
 3. Enacting new legislation to convert the title system from the current hybrid state to full Torrens title on the following conditions:
 - (i) The conversion to title registration would be on a provisional basis by creating limited titles which would mature into full titles after 12 years (the period for limitation of actions against land under the Limitation Act 1975), with any new land coming into the system such as leases of customary land or Government land going directly to full title.
 - (ii) During the provisional period the limited titles would be conclusive as regards any registration entries made after the date of conversion but they would be subject to interests, if any, created before conversion and not shown on the titles
 - (iii) A State indemnity would be available for persons suffering loss through mistakes within the Land Registry; or through the registration of another person's interest.

Adoption of this option would provide Samoa with a modern and efficient land registration system providing security of title, certainty and speed of transactions and ease of access to information for all users.

RECOMMENDATION

It is recommended that Cabinet:

- (a) endorse the recommendations of the Report; and
- (b) approve the preparation of legislation to support a system of Torrens title operating with a computerised Registry.

(Honourable Tuisugaletaua S. Aveau)

MINISTER FOR NATURAL RESOURCES, ENVIRONMENT AND METEOROLOGY