

SAMOA

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1998, No. 33

AN ACT to amend the International Companies Act 1987.
(16 July 1998)

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

1. Short title and commencement-(1) This Act may be cited as the International Companies Amendment Act 1998 and shall be read together with and deemed part of the International Companies Act 1987 (hereinafter referred to as the principal Act).

(2) This Act shall come into effect on the day after the date of assent (in this Act referred to as the commencement date).

(3) Any reference in this Act to an enactment is, unless the context otherwise requires, a reference to that enactment as amended, extended, re-enacted, or applied by or under any other enactment, including this Act.

2. Interpretation - Subsection (1) of section 2 of the principal Act is hereby amended by -

(i) Inserting after the term “company” and its definition, the following terms and definitions:

“Company Limited by Shares” means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them and such members shall be called shareholders:

“Company Limited by Guarantee” means a company

having the liability of its members limited by the memo-randum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up and such members shall be called guarantee members:

“Company Limited by Both Shares and Guarantee,” means a company having the liability of its members limited by the memorandum -

- (a) In the case of members who have given a guarantee, to such amount as they have respectively undertaken to contribute to the assets of the company in the event of it being would up and such members shall be called guarantee members; and
- (b) In the case of members who are shareholders, to the amount, if any, unpaid on the shares respectively held by them and such members shall be called shareholders;

(ii) Deleting the definition of “Member” and substituting the following:

- “(a) In relation to a company, other than a limited life international company, means a person whose name is entered in the company’s Register of Members, whether as a shareholder or a guarantee member, or who is entitled to have his name so entered;
- (b) In relation to a limited life international company means a person whose name is entered as a member in the Register of Members of a limited life international company.”

(iii) Inserting after the term “Public Notice” and its definition, the following term and definition:

“Register of Members” -

- (a) In relation to a company, other than a limited life international company, means the Register kept pursuant to section 105;
- (b) In relation to a limited life international company, means the register kept by a limited life international company pursuant to section 30G in which the names of its members are entered.

3. Restriction on shareholding in International Company - Section 6 of the principal Act is hereby amended by deleting the Heading and by repealing subsection (1) and substituting the following Heading and subsection:

“6. Restriction on membership interest in International Company-(1) No natural person who is a citizen or resident of or domiciled in Samoa and no company incorporated or registered under the Companies Act 1955 except a trustee company may either individually or with another person or persons and whether directly or indirectly and whether in consequence of any trust or similar arrangement or otherwise, be or become a shareholder in or guarantee member of an international company under this Act or a foreign company that has the centre of its administrative management in Samoa unless that foreign company is registered under the Companies Act 1955.”

4. Official liquidator - Section 11 of the principal Act is amended by inserting after subsection (5) the following subsection:

“(6) The Registrar may from time to time prescribe and publicly notify annual fees for registration as an official liquidator.”

5. Formation of companies - Subsection (3) of section 13 of the principal Act is hereby amended by repealing the said subsection and substituting the following subsections:

“(3) Every international company, other than a limited life

international company, incorporated under this Act, shall be -

- (a) A company limited by shares; or
 - (b) A company limited by guarantee; or
 - (c) A company limited by both shares and guarantee.
- (4) Every limited life international company incorporated under this Act shall be a company limited by shares.”

6. Transfer to Samoa of company incorporated outside of Samoa - Section 16 of the principal Act is hereby amended by repealing subsections (1), (2) and (5) and substituting the following subsections:

“(1) A company incorporated as a company or corporation under the laws of any country other than Samoa, or of any jurisdiction within such a country, may, if not prohibited under the laws of that other jurisdiction, apply to the Registrar to be registered as being continued in Samoa as if it had been incorporated under this Act.

(2) Upon application under subsection (1), supported by such material as he considers adequate and satisfactory, the Registrar, subject to section 225 and the payment of any prescribed fee, may register such company as being so continued and, if so registered, the company shall be deemed thereafter to be an international company under this Act and domiciled in Samoa; Provided that no company may be registered under this section if -

- (a) Its winding-up has commenced; or
- (b) A receiver of its property has been appointed; or
- (c) There is any scheme or order in force in relation thereto whereby the rights of creditors are suspended or restricted.”

7. Requirements as to memorandum-(1) Subsection (1) of section 18 of the principal Act is hereby amended by repealing the said subsection and substituting the following subsection:

“(1) The memorandum of every international company, other than a limited life international company (to which section 30 C shall apply in this regard) shall be printed and divided into numbered paragraphs and dated and shall state the following -

- (a) The name of the company;
- (b) Whether the company is a company limited by shares, a company limited by guarantee or a company limited by both shares and guarantee;
- (c) The full name and address of the subscriber thereto or the full names and addresses of the subscribers thereto, as the case may be;
- (d) In relation to the share capital of the company, if any-
 - (i) where the company proposes to issue only par value shares, the amount of the share capital with which it is proposed to be registered and the division thereof into shares of a fixed amount;
 - (ii) where the company proposes to issue only no par value shares, the number of shares; or
 - (iii) where the company proposes to issue both par value shares and no par value shares, the fixed value of the par value shares and the number of no par value shares;
- (e) In relation to a company limited by guarantee or a company limited by both shares and guarantee, that each guarantee member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member such amount as may be required, not exceeding the amount specified in the memorandum, for the payment of the company's debts and liabilities contracted before he ceased to be a member and of the costs, charges and expenses of winding up and for any adjustment of the rights of contributories as

between themselves;

- (f) That the subscriber or subscribers to the memorandum desire the formation of an international company and that on incorporation of a company limited by shares or limited by both shares and guarantee, shares of the number and class in the capital of the company set out are to be issued to the subscriber or the respective subscribers.”

(2) Section 18 is further amended by repealing subsections (3) and (4)

8. Liability of Members - The principal Act is further amended by inserting after subsection 18, as amended by section 7 of this Act, the following section:

“18A. Liability of Members-(1) An international company is a legal entity, considered in law a fictitious person, distinct from its members and with separate rights and liabilities. Save as may be specified by this Act or by contract, the members of an international company do not owe any duty, liability or obligation to the international company, any other member of the international company, any creditor of the international company or any other company related to the international company.

(2) In the case of a company limited by shares or by guarantee or both by shares and by guarantee, a member is liable to the international company -

- (a) In the case of members who have given a guarantee, only to the extent to which that member has undertaken to contribute from time to time and in the event of its being wound up; and
- (b) In the case of members who are shareholders, only to the extent of any amount unpaid on the shares respectively held by them.”

9. Companies limited by guarantee and companies limited both by shares and by guarantee - The principal Act

is further amended by inserting after subsection 18, as amended by section 7 of this Act, the following section:

“18B Companies limited by guarantee and companies limited both by shares and by guarantee-(1) Notwithstanding any rule of common law or equity dealing with the nature of guarantees, where an international company is a company limited by guarantee, or is a company limited both by shares and by guarantee, a guarantee given by a member is deemed to be a proprietary interest which is capable of constituting a membership interest in the international company and also of being freely transferred, assigned, charged or otherwise disposed of or dealt with to or in favour of any person in the manner prescribed in the articles of the international company; and such transfer, assignment, charge or other disposition or dealing shall not affect the validity of the guarantee, but shall transfer both the membership interest and the guarantee obligation to that other person.

(2) In the case of a transfer or other absolute disposition of such a guarantee as referred to in subsection (1), the transferor shall no longer be a member of the international company.

(3) The transfer of a guarantee shall be effected by notice in writing to the international company.

(4) In the case of a company limited both by shares and by guarantee, nothing in this Act shall require a shareholder to also be a guarantee member of that international company or *vice versa*.

(5) Subject to the articles and any contract to the contrary, a guarantee member may surrender his guarantee to an international company and following any such surrender made in writing, his liability shall cease absolutely after the date of such surrender.”

10. Change of status - The principal Act is further amended by inserting after subsection 18, as amended by section 7 of this Act, the following section:

“18C Change of status-(1) Every international company, other than a limited life international company, incorporated or continued under this Act may, unless its memorandum otherwise provides, change its status from any of the types of companies specified in paragraphs (a) to (c) of subsection (3) of section 13 to any other type of company specified therein in accordance with this section; and such change may be effected notwithstanding that at some earlier time the company has been any other or the same type of company as contemplated by the provisions of that subsection.

(2) Any international company may change its status only if all of the following requirements are complied with -

(a) The proposed change is specifically authorised by a special resolution of the members of the international company and is given effect to, as contemplated by subsection (3), within six months from the date of such resolution; and

(b) The directors make a statutory declaration which is lodged with the Registrar that -

(i) the change of status will, in their honest belief, not result in the international company thereby being incapable of meeting its obligations to its creditors as they fall due; and

(ii) the international company has complied with all the provisions of this Act (including the payment of any fees due to the Registrar); and

(iii) the memorandum and articles will be duly amended within at least three days to reflect the change of status.

(c) Payment of the prescribed fee.

(3) The change of status of an international company shall take effect upon the day upon which it files a copy of the amended memorandum and articles with the Registrar.

(4) Where -

(a) Any member of an international company did not vote in favour of the members' special resolution to change the status of the international company; and

(b) The change of status may have the effect of increasing the liability of that member, then, except in so far as that change was made in accordance with the rights of that member as were specified in the articles of the international company at the time that person became a member, that member may either -

(i) at any time within 60 days of the passing of the resolution, forfeit his membership interest to the international company, whereupon his liability shall be immediately and absolutely terminated; or

(ii) lodge an application with the Registrar to have the change of status cancelled, and if any such application is made the change of status shall not have effect until confirmed by the Registrar and the provisions of subsections (2), (3), (4) and (5) of section 55 of this Act shall apply *mutatis mutandis* where any such application is made.

(5) A member who has forfeited his membership interest pursuant to subsection (4)(i) shall receive from the international company such amount as may be specified in the articles or as may be agreed or, failing that such amount as may be determined by the Registrar (or a chartered accountant approved by the Registrar, whose costs are to be paid by the international company) as representing that member's proportional interest in the realizable net tangible assets of the international company; Save however that any such amount shall be paid only to the extent to which the international company would not otherwise be rendered insolvent.

(6) A certificate of change of status issued by the Registrar, shall be conclusive evidence that all the requirements of this Act with respect to the change of status have been complied with and that the international company is henceforth of the type stated in that certificate, being a company validly incorporated pursuant to this Act.

(7) Any change in status of an international company pursuant to this section shall not operate to -

- (a) Create a new legal entity;
- (b) Prejudice or affect the identity of the body corporate, or its continuity;
- (c) Affect the property or rights or obligations of the international company; or
- (d) Render defective any legal proceedings whatsoever.”

11. Consequential changes - The principal Act is further amended by inserting after subsection 18, as amended by section 7 of this Act, the following section:

“18D Consequential changes - Any provisions of this Act referring or otherwise relating to shares, share certificates or share capital (whether in respect of their value, terms of payment, issue or allotment, amount or otherwise) shall, subject to the provisions of this Act, apply in respect of a company limited by guarantee or a company limited by both shares and guarantee, subject to such modifications as may be necessary by reason of the fact that such a company may or may not have a share capital.”

12. Names of companies - Subsection (2) of section 22 of the principal Act is amended by repealing paragraph (e).

13. Change of name-(1) Subsection (1) of section 23 of the principal Act is amended by inserting after the words “special resolution” the words “or, where permitted by its memorandum, by a resolution of the directors,”.

(2) Subsection (2) of section 23 of the principal Act is further amended by deleting the words “within 3 months” and substituting the words “within 30 days”.

14. Registration - Subsection (5) of section 30A of the principal Act is amended by deleting the words “of the principal Act”.

15. Issue of Certificate-(1) Paragraph (b) of subsection

(2) of section 30B of the principal Act is amended by deleting the words “of the principal Act”.

(2) Subsection (3) of section 30B of the principal Act is further amended by deleting the words “the principal Act” wherever they appear and substituting the word “this Act.”

16. Memorandum - Subsection (3) of section 30C of the principal Act is amended by deleting the words “of the principal Act”.

17. Powers - Section 30D of the principal Act is amended by deleting the words “of the principal Act”.

18. Articles of organisation - Subsection (3) of section 30E of the principal Act is amended by deleting the words “of the principal Act”.

19. Members - Subsection (4) of section 30G of the principal Act is amended by deleting the words “of the principal Act”.

20. Resident agent - Subsection (4) of section 30J of the principal Act is amended by deleting the words “of the principal Act”.

21. Dissolution - Subsections (4),(5), (8), (9) and (10) of section 30L of the principal Act are amended by deleting the words “of the principal Act” wherever they appear.

22. Saving - Section 30M of the principal Act is repealed.

23. Registered office of company - Subsection (2) of section 81 of the principal Act is amended by deleting the words “within 14 days after the date of the company’s incorporation” and substituting the words “at the time of incorporation of the company”.

24. Register of Directors and Secretaries - Subsections (2) and (3) of section 91 of the principal Act are amended by

inserting after the words “authorised nominees and representatives in Western Samoa”, the words “if any”.

25. Register and index of Members - Subsection (1) of section 105 of the principal Act is amended by repealing the said subsection and substituting the following subsection:

“(1) Every international company shall keep a register of its members and enter therein -

- (a) The names and addresses of the members;
- (b) The date on which the name of each person was entered in the register as a member;
- (c) The date on which any person who ceased to be a member during the previous 7 years so ceased to be a member;
- (d) In relation to a company limited by shares or a company limited by both shares and guarantee:
 - (i) a statement of the shares held by each member, distinguishing each share by its number, if any, of the certificate evidencing the member’s holding and of the amount paid or agreed to be considered as paid on the shares of each member and
 - (ii) the date of every allotment of shares to members and the number of shares comprised in each allotment;
- (e) In relation to a company limited by guarantee or a company limited by both shares and guarantee, a statement of the amount specified in the memorandum which each member has undertaken to contribute to the assets of the company in the event of its being wound up;
- (f) In the case of shares issued to bearer, the total number of each class and series of shares issued to bearer; and with respect to each certificate for shares issued to bearer,
 - (i) the identifying number of the certificate

- (ii) the class or series of shares issued to bearer specified therein; and
- (iii) the date of issue of the certificate.”

26. Liability as contributories of present and past members-(1) Paragraph (e) of subsection (1) of section 151 of the principal Act is amended by inserting after the words “which he is liable”, the words, “or, in relation to companies limited by guarantee or companies limited by both shares and guarantee, to the amount specified in the memorandum;”

(2) Subsection (4) of section 151 of the principal Act is further amended by inserting after the words “balance of any call”, the words “or guarantee amount”.

27. Application for winding-up-(1) Section 158 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(3A) The petitioner shall serve a copy of the petition on the international company named therein.”

(2) Subsection (6) of section 158 of the principal Act is further amended by inserting after the words “the Head of State prescribing”, the words “practice and procedure in Court applications or”.

28. Powers of the Registrar to strike companies off the register-(1) Section 197 of the principal Act is amended by deleting the Heading and substituting the following Heading:

“Powers of the Registrar to Strike Companies Off the Register”

(2) Subsection (1) of section 197 of the principal Act is amended by repealing the said subsection and substituting the following subsections:

“(1) The Registrar may strike off from the Register the

name of an international company -

- (a) Which ceases to comply with any of the requirements of section 6 or section 7;
- (b) For failure to pay its prescribed annual renewal fee or penalties, as specified in the regulations;
- (c) For failure to comply with a direction from the Registrar under subsection (2) of section 23;
- (d) Which is not carrying on business or in operation;
- (e) Which has been directed by the Minister under section 225 to cease to carry on its business;
- (f) Which is being wound up, and has no liquidator acting or whose affairs have been fully wound up.

(1A) Where the Registrar intends to strike off the name of an international company under this section, he shall give notice of his intention to the company at its registered office in Samoa. The notice shall state that if an answer showing cause to the contrary is not received within two months from the date thereof, the Registrar will strike the name of the company off the register.”

(3) Subsection (3) of section 197 of the principal Act is amended by repealing the said subsection and substituting the following subsection:

“(3) Where an international company has been struck off the Register, the Registrar may -

- (a) Upon the application of the international company or a trustee company on its behalf, or a creditor, member or liquidator of the company; and
- (b) If he is satisfied that due cause has been shown and that it would be just for the name of the company to be restored to the Register; and
- (c) Upon payment of the prescribed fee and any outstanding fees and penalties, and
- (d) Upon the filing of such documents and statutory returns as the Registrar may direct,

restore the company to the Register. Upon restoration of the

company to the Register, the company shall be deemed to have continued in existence as if it had never been struck off the Register.”

29. Transfer from Samoa of companies incorporated under this Act - Subsection (2) of section 209 of the principal Act is amended by repealing subparagraphs (ii) and (iii) of paragraph (a) and substituting the following subparagraphs:

- “(i) the holders of not less than three-quarters of the company’s debentures, if any, of each class;
- (ii) where the company is limited by guarantee, not less than three-quarters of the guarantee members; and
- (iv) all the directors of the company.”

30. Transfer to domestic company register - Paragraph (a) of subsection (2) of section 210 of the principal Act is amended by repealing subparagraph (i) and substituting the following subparagraph:

- “(i) the holders of not less than three-quarters of each class of shares in the company, if any; and where the company is limited by guarantee to any extent, not less than three-quarters of the guarantee members; and”

31. Translation of instruments-(1) Subsection (1) of section 216 of the principal Act is amended by inserting after the words “for all purposes under this Act”, the words “The certified translation may be contained in the body of the original document or instrument or may be contained in a separate document”.

(2) Paragraph (c) of subsection 3 of section 216 of the principal Act is further amended by deleting the words “specified by section 229A of this Act”.

32. Documents by electronic transfer - The principal Act is further amended by inserting after section 216 the following section:

“**216A Documents by electronic transfer**-(1) Where a notice or document is required by this Act to be lodged or filed with the Registrar, he may accept a photocopy of the notice or document or a copy by telefax or other electronic means.”

33. Filed memorandum and articles - The principal Act is further amended by inserting after section 216 the following section:

“**216B Filed memorandum and articles**-(1) Where this Act requires that the Memorandum and Articles of a company be sent to the Registrar, unless otherwise specifically provided, such documents may be delivered in such manner as the Registrar approves.

(2) A signature required on any document referred to in subsection (1) may be printed or otherwise mechanically or electronically reproduced on the document.

(3) A document with a signature referred to in subsection (2) may be accepted in evidence, notwithstanding any provision to the contrary in the Evidence Ordinance 1961.”

34. Alteration of documents by the Registrar - The principal Act is further amended by inserting after section 216 the following section:

“**216C. Alteration of documents by the Registrar** - The Registrar may alter a notice or document, other than an affidavit or statutory declaration, if so authorised by the person who sent him the notice or document, or by the representative of that person.”

35. Retention of records of companies struck off the register - The principal Act is further amended by inserting

after section 216 the following section:

“216D Retention of records of companies struck off the register-(1) The Registrar need not produce any document or other records of an international company that has been struck off the Register, after seven years from the date the company was so struck off the Register.

(2) A trustee company need not retain the records of an international company that has been struck off the Register after seven years from the date the company was so struck off the Register.”

36. General penalty provisions-(1) Subsection (2) of section 219 of the principal Act is amended by deleting the words “193 and 241” and substituting the words “and 193”.

(2) Subsection (3) of section 219 of the principal Act is amended by deleting the words “87, 194, 195, 227, 232 and 239” and substituting the words “87, 194 and 227”.

37. Prohibitions by Minister-(1) Subsection (1) of section 225 of the principal Act is amended by deleting the words “acting on the advice of Cabinet” and substituting the words “acting on the advice of the Registrar”.

(2) Subsection (1) of section 225 is further amended by repealing paragraphs (b) and (c) and substituting the following paragraphs:

- “(b) Prohibiting the initial registration of a foreign company or class of foreign companies;
- (c) Prohibiting the continuation in Samoa of any company or class of companies incorporated outside Samoa; or
- (d) Directing any international company or foreign company to cease to carry on its business or part of its business either immediately or within such time as may be specified in the direction.”

(3) Subsection 2 of section 225 of the principal Act is

further amended by deleting the words “acting on the advice of Cabinet” and substituting the words “acting on the advice of the Registrar”.

38. Secrecy - Subsection (4) of section 227 of the principal Act is amended by -

- (a) Deleting the words “subsection (1)” and substituting the words “subsection (3)”.
- (b) Inserting the following subparagraphs after subparagraph (h):

- “(i) By the Registrar or any public officer or any statutory body or authority of Samoa in vetting, verifying and investigating applicants for all offshore licences and registrations issued by the Government of Samoa pursuant to any offshore finance legislation, including without limiting the generality of the foregoing, the Offshore Banking Act 1987, the International Insurance Act 1988 and the Trustee Companies Act 1987;
- (j) By the Registrar or any public officer in making available for inspection an index of company names and their registered offices.”

39. Form of company registers - Section 228A of the principal Act is amended by renumbering the said section as subsection (1) of section 228A and inserting after the said subsection (1) the following subsection:

“(2) Any register, records, accounts or documents required to be kept by the Registrar pursuant to this Act may be kept in written, magnetic, electronic or any other data storage form, provided that a legible printed copy of its content can be produced.”

40. Asset protection - Subsection (2) of section 228B of the principal Act is amended by deleting the definition of

“membership interest” and substituting the following definition:

“membership interest” means -

- (a) Any interest in a share of an international company;
or
- (b) Any other interest of a person where that interest arises from or in connection with the fact that the person is a member of an international company;”

41. Exemptions and Privileges of International Companies - Subsection (4) of section 249 of the principal Act is amended by inserting after paragraph (d) the following paragraphs:

- “(e) Carry on banking or trust business, unless it is licensed under an enactment authorising it to carry on that business;
 - (f) Carry on business as an insurance or reinsurance company or insurance manager unless it is licensed under an enactment authorising it to carry on that business;”
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