

SAMOA

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1998, No. 29**AN ACT to amend the International Insurance Act 1988.***(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 Insurance Amendment Act 1998 and shall be read together with and deemed part of the International Insurance Act 1988 (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 - Section 2 of the principal Act is hereby amended by -

- (a) Inserting before the term “approved securities” and its definition, the following term and definition;
“Actuary” means a person who has qualified as an actuary by examination of one of the professional bodies of actuaries for the time being approved by the Registrar and who is a current member in good standing of one of the said bodies, or is a person of good standing with some other actuarial qualification who is recognised by the Registrar as such for the purposes of this Act :
- (b) Inserting in the definition of “registered insurer” after the words “means an insurer registered”, the words “or formerly registered”.

3. Use of the word “Insurance”, etc. - The principal Act is amended by inserting after section 4 the following section:

“4A Use of the word “Insurance”, etc.-(1) Except with the approval of the Registrar in writing, no person, other than a registered insurer under this Act or the holder of a valid insurance licence issued under the Insurance Act 1976 shall -

- (a) Use or continue to use the words “insurance”, “assurance”, “indemnity”, “guarantee”, “underwriting”, “reinsurance”, “re”, “surety”, “casualty”, or any other word which in the opinion of the Registrar connotes insurance business or any of their derivatives in any other language in the description or title under which such person is carrying on business in or from within Samoa; or

(b) Make or continue to make any representation in any billhead, printed form, letter, letterhead, circular, paper, notice, advertisement or in any other manner whatsoever that such person is carrying on offshore insurance business in or from within Samoa.

(2) Every person who contravenes this section commits an offence against this Act.”

4. Notification of changes - Section 12 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) Any person who fails to comply with this section commits an offence against this Act.”

5. Actuarial Valuation - The principal Act is further amended by inserting after section 14 the following section:

“**14A. Actuarial Valuation**-(1) Every registered insurer licensed to carry on long term business shall, in addition to filing audited accounts as required under section 14, prepare and file every two years an actuarial valuation of its assets and liabilities, certified by an approved actuary, so as to enable the Registrar to be satisfied as to its solvency.

(2) The actuarial valuation shall be submitted to the Registrar not later than six months after the close of the financial year to which it relates.

(3) Any person who contravenes this section, commits an offence against this Act.”

6. Statutory and Longterm Business Funds - Section 16 of the principal Act is amended by inserting in subparagraph (i) of paragraph (f) of subsection (3) after the words “each of whatsoever nature” the word “in”.

7. Restriction of Business - Section 20 of the principal Act is amended by inserting after subsection (4) the following subsections:

“(5) A registered insurer shall not use or operate under a name which -

- (a) So closely resembles or is identical to the name of any company, firm or business house whether within Samoa or not, as is likely to mislead or deceive;
- (b) Is calculated to falsely suggest the patronage of or connection with some person or authority whether within Samoa or not;
- (c) Is calculated to falsely suggest that such registered insurer has a special status in relation to or derived from the Government of Samoa, or has the official backing of or acts on behalf of the said Government or of any department of official thereof or is recognised in Samoa as a national insurer.

(6) Any person who contravenes this section commits an offence against this Act.”

8. Shares not to be issued or transferred without approval - The principal Act is further amended by inserting after section 20 the following section:

“20A. Shares Not to Be Issued or Transferred Without Approval-(1) No shares in or other securities whatsoever of a registered insurer shall be issued and no issued shares or beneficial interests in shares or other securities of any registered insurer shall be transferred or disposed of in any manner without the prior written approval of the Registrar:

Provided that the Registrar may exempt any registered insurer from the provisions of this section, subject to such terms and conditions, if any, as he may deem necessary.

(2) In subsection (1) the reference to shares of any registered insurer being transferred or disposed of includes any

transfer or disposition that would result in any change in beneficial ownership of the registered insurer.

(3) Notwithstanding the provisions of subsection (1), the prior written approval of the Registrar shall not be required where shares or other securities are issued to existing shareholders on a pro-rata basis.

(4) No bearer shares or share warrants to bearer may be issued by a registered insurer.”

9. Preservation of Secrecy - Section 26 of the principal Act is repealed and the following section substituted:

“26. Preservation of Secrecy-(1) Except for the purpose of the performance or exercise of his duties or functions under this Act or when lawfully required to do so by any court of competent jurisdiction within Samoa neither the Minister, the Registrar nor any officials or officers thereof shall disclose any information relating to any application by any person under the provisions of this Act or to the affairs of a registered insurer or of any policy holder of a registered insurer which he has acquired in the performance or exercise of such duties or functions under this Act.

(2) Subsection (1) shall not apply to a disclosure by the Registrar -

- (a) Necessary for the effective regulation of a registered insurer;
- (b) In respect of the affairs of the registered insurer or a policyholder of a registered insurer with the authority of the registered insurer or the policyholder of the registered insurer which has been voluntarily given, as the case may be;
- (c) Where the information is already in the public domain.

(3) The Registrar may disclose to a foreign insurance supervisory authority or any other like regulatory authority information about the registered insurer, provided that -

- (a) The Registrar has satisfied himself that the intended recipient authority is subject to adequate legal

restrictions on further disclosures which shall include the provision of an undertaking on confidentiality;

- (b) The information provided by the Registrar does not contain any names of individual policy holders of the registered insurer concerned; and
- (c) The information is required for the purposes of insurance supervision only and is not related directly or indirectly to the imposition, calculation and collection of taxes or the enforcement of exchange control regulations.”

10. Breaches of professional secrecy-(1) Subsection (1) of section 32 of the principal Act is amended by inserting before the words “Every person commits an offence against this Act”, the words “Except as provided in section 26,”.

(2) Subsection (3) of section 32 of the principal Act is amended by -

- (a) Deleting in paragraph (a) the words “if directed to do so by the Minister”;
- (b) Inserting after paragraph (f) the following paragraph:

“(g) To the Registrar by the auditor or former auditor or by the actuary or former actuary of a registered insurer with respect to its audited accounts or actuarial valuations.”

11. General penalty provisions-(1) Subsection (1) of section 40 of the principal Act is amended by inserting after the word “sections” the word “12”.

(2) Subsection (2) of section 40 of the principal Act is amended by inserting after the word “4” the word “4A” and by inserting after the word “8” the word “20”.

12. Financial provisions-(1) Subsection (1) of section 43 of the principal Act is amended by deleting paragraphs (c) and (d) and substituting the following paragraphs -

- “(c) The International Trusts Act 1987 or any successor legislation;
- (d) The Trustee Companies Act 1987; and
- (e) The International Partnership and Limited Partnership Act 1998;”

(2) Subsection (2) of section 43 of the principal Act is amended by inserting after the words “the Minister” the words “or the Inspector of Offshore Banks”.

(3) Subsection (6) of section 43 of the principal Act is amended by deleting the words “(c) and (d)” and substituting the words “(c), (d) and (e)”.

13. Insurance Act 1976 - The principal Act is further amended by inserting after section 43 the following new section:

“**44. Insurance Act 1976** - Nothing in the provisions of the Insurance Act 1976 shall apply to an international insurance company registered under this Act.”