

**INTERNATIONAL COMPANIES
AMENDMENT BILL 2015**

SAMOA

Arrangement of Provisions

1. Short title and commencement
2. Sections 39 and 39A amended
3. Section 113 amended
4. Consequential amendments

2015, No.

A BILL INTITULED

AN ACT to amend the International Companies Act 1988 (“principal Act”).

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 2015.

(2) This Act commences on the date of assent of the Head of State.

**TULAFONO TAU FAAOFI O TEUTEUGA O LE
TULAFONO O KAMUPANI FAAVA O MALO 2015**

SAMOA

Faatulagaina o Aiaiga

1. Igoa puupuu ma le amataga
2. Ua teuteuina fuaiupu 39 ma le 39A
3. Ua teuteuina le fuaiupu 113
4. Teuteuga faatupulaia

2015, Nu.

O SE TULAFONO TAU FAAOFI UA TAU

O SE TULAFONO e teuteu ai le Tulafono o Kamupani Faava o Malo 1988 (“Tulafono autu”).

UA FAIA e le Fono Aoao Faitulafono a Samoa i totonu o le Palemene ua potopoto e faapea:

1. Igoa puupuu ma le amataga-(1) E mafai ona taua leni Tulafono o le Tulafono o Teuteuga o le Tulafono o Kamupani Faava o Malo 2015.

(2) O leni Tulafono e amata faamamaluina i le aso e tuuina i ai le maliega a Le Ao o le Malo.

2. Sections 39 and 39A amended - For sections 39 and 39A of the principal Act substitute:

“39. Bearer shares and share warrants - A memorandum of a company that had issued bearer shares prior to the International Companies Amendment Act 2014 (“grandfather bearer share company”) is deemed to be amended from effect from 27 January 2014 to state that the company is not authorised to issue bearer shares or share warrants to a bearer, convert registered shares; and with effect from that date, the company shall cease to be a bearer share company.

39A. Transitional provision-(1) Any bearer shares or share warrants that have been issued by an international company to a bearer prior to 27 January 2014 shall continue for a period of 12 months from the commencement of the International Companies Amendment Act 2014 and thereafter shall cease to be a bearer share or share warrants.

(2) The rights in these bearer shares or share warrants must be converted into registered shares within six (6) months from the commencement of the International Companies Amendment Act 2015. Any shares, warrants and the rights attached thereto that are not converted within this period are cancelled by operation of law.”.

3. Section 113 amended - For section 113(1) of the principal Act substitute:

2. Ua teuteuina fuaiupu 39 ma le 39A - Mo fuaiupu 39 ma le 39A o le Tulafono autu, ia suia e faapea:

“39. Sea umia ma tusi faamaonia o sea umia - O mataupu faamaonia faatulafonoina a se kamupani lea na ia tuuina atu o sea umia, a o lumanai ai le Tulafono o Teuteuga o le Tulafono o Kamupani Faava Malo 2014 (“kamupani sa tuuina atu sea umia”) ua faatatauina e faapea o le a teuteuina ma aloaia mai le aso 27 Ianuari 2014, ina ia taua ai e faapea, e lē toe faatagaina le kamupani ona tuuina atu o sea umia po o tusi faamaonia o sea umia i lē e umia sea, faaliliuina sea ua faamauina; ma le faamamaluina e afua mai lea aso, o le a tatau loa i le kamupani ona faamuta le aveai ma kamupani sa tuuina atu sea umia.

39A. Aiaiga tau soloaiga-(1) So o se sea umia po o se tusi faamaonia o sea umia na tuuina atu e se kamupani faava o malo i se tagata e umia, a o lumanai ai le aso 27 Ianuari 2014, e tatau ona faaaauau pea mo se vaitaimi e 12 masina mai le aso e amata faamamaluina ai le Tulafono o Teuteuga o le Tulafono o Kamupani Faava o Malo 2014, ma o le a mulimuli ane ai ona faamutaina le aveai ma sea umia po o tusi faamaonia o sea umia.

(2) O aia tatau i nei sea umia po o tusi faamaonia o sea umia, e ao ona faaliliuina i sea ua faamauina i totonu o le ono (6) masina mai le aso e amata faamamaluina ai le Tulafono o Teuteuga o le Tulafono o Kamupani Faava o Malo 2015. O so o se sea, tusi faamaonia o sea umia ma aia tatau o faapipiina i ai, ia e le i faaliliuina i totonu o lenei vaitaimi, e faalēaogāina e ala i le faagaoioiga o le tulafono.”.

3. Ua teuteuina le fuaiupu 113 - Mo le fuaiupu 113(1) o le Tulafono autu, ia suia e faapea:

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“(1) An international company must keep accounting records and such records should:

- (a) correctly explain all transactions;
- (b) enable the financial position of the international company to be determined with reasonable accuracy at any time;
- (c) enable the directors to check that any accounts prepared by the international company under this part complies with the requirements of this Act;
- (d) allow financial statements to be prepared;
- (e) include underlying documentation, such as invoices, contracts and so forth;
- (f) reflect the following details -
 - (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
 - (ii) all sales and purchases and other transactions; and
 - (iii) the assets and liabilities of the relevant entity or arrangement.

(1A) An international company must retain all the accounts and records referred to in subsection (1) for seven (7) years after the end of the financial year or accounting period to which they relate.

(1B) An international company that contravenes or fails to comply with subsection (1) or (1A) commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.”.

“(1) E ao i se kamupani faava o malo ona tausia faamaumauga o faamatalaga tau tupe ma o ia faamaumauga e tatau ona:

- (a) sao atoatoa le faamatalaina o feuiaiga uma faapisinisi;
- (b) mafai ona fuafuaina ai i se tulaga talafeagai, le sao atoatoa o le tulaga tau tupe a le kamupani faava o malo i so o se taimi;
- (c) mafai ai e faatonu ona suesueina e faapea, o so o se faamatalaga tau tupe ua saunia e le kamupani faava o malo, i lalo o lenei vaega, o lo o tausisia manaoga o lenei Tulafono;
- (d) avanoa ai mo le saunia o faamatalaga tau tupe;
- (e) aofia ai o pepa aloaia taua, e pei o inivoisi, konekarate ma isi faapena;
- (f) atagia ai faamatalaga auiliili nei -
 - (i) aofaiga uma o tupe na maua ma tupe na faaaluu ma mataupu e faasino i ai tupe maua ma tupe na faaaluu na faatinoina;
 - (ii) o oloa uma na faatauina atu ma oloa uma na faatauina mai ma isi feuiaiga faapisinisi; ma
 - (iii) aseta ma noataga a le kamupani talafeagai po o faatulagaga.

(1A) E ao i se kamupani faava o malo ona taofia o faamatalaga uma tau tupe ma faamaumauga o faasinomia i totonu o le faafuaiupu (1) mo le fitu (7) tausaga, i le tuanai ai o le faaiuga o le tausaga faaletupe po o le vaitaimi o le tausaga o faamatalaga tau tupe lea e faasino i ai ia faamaumauga.

(1B) O se kamupani faava o malo e solia po o ua lē mafai ona tausisia le faafuaiupu (1) po o le (1A), ua faia o se soligatulafono ma e noatia i luga o se moliaga ua faamaonia faaletulafono i se sala tupe e lē silia le 100 iunite tau faasalaga.”.

4. Consequential amendments-(1) In section 58(1) of the Special Purpose International Companies Act 2012, substitute:

“(1) A company must keep accounting records and such records should:

- (a) correctly explain all transactions;
- (b) enable the financial position of the company to be determined with reasonable accuracy at any time;
- (c) enable the directors to check that any accounts prepared by the company under this part complies with the requirements of this Act;
- (d) allow financial statements to be prepared;
- (e) include underlying documentation, such as invoices, contracts and so forth;
- (f) reflect the following details -
 - (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
 - (ii) all sales and purchases and other transactions; and
 - (iii) the assets and liabilities of the relevant company.

(1A) A company must retain all the accounts and records referred to in subsection (1) for seven (7) years after the end of the financial year or accounting period to which they relate.

4. Teuteuga faatupulaia-(1) I totonu o le fuaiupu 58(1) o le Tulafono o Kamupani Faava o Malo mo se Faamoemoega Faapitoa 2012, ia suia e faapea:

“(1) E ao i se kamupani ona tausia faamaumauga o faamatalaga tau tupe ma o ia faamaumauga e tatau ona:

- (a) sao atoatoa le faamatalaina o feuiaiga uma faapisinisi;
- (b) mafai ona fuafuaina ai i se tulaga talafeagai, le sao atoatoa o le tulaga tau tupe a le kamupani i so o se taimi;
- (c) mafai ai e faatonu ona suesueina o so o se faamatalaga tau tupe ua saunia e le kamupani, i lalo o lenei vaega, o lo o tausisia manaoga o lenei Tulafono;
- (d) avanoa ai mo le saunia o faamatalaga tau tupe;
- (e) aofia ai o pepa aloaia taua, e pei o inivoisi, konekarate ma isi faapena;
- (f) atagia ai faamatalaga auiliili nei -
 - (i) aofaiga uma, o tupe maua ma tupe faaalu ma mataupu e faasino i ai tupe maua ma tupe faaalu na faatinoina;
 - (ii) o oloa uma na faatauina atu ma oloa uma na faatauina mai ma isi feuiaiga faapisinisi; ma
 - (iii) aseta ma noataga a le kamupani talafeagai.

(1A) E ao i se kamupani ona taofia o faamatalaga uma tau tupe ma faamaumauga o faasinomia i totonu o le faafuaiupu (1) mo le fitu (7) tausaga, i le tuanai ai o le faaiuga o le tausaga faaletupe po o le vaitaimi o le tausiga o faamatalaga tau tupe lea e faasino i ai ia faamaumauga.

(1B) A company that contravenes or fails to comply with subsection (1) or (1A) commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.”.

(2) In section 46(1) of the International Partnership and Limited Partnership Act 1998, substitute:

“(1) An international partnership or limited partnership must keep accounting records and such records should:

- (a) correctly explain all transactions;
- (b) enable the financial position of the international partnership or limited partnership to be determined with reasonable accuracy at any time;
- (c) enable the directors to check that any accounts prepared by the international partnership and limited partnership under this part complies with the requirements of this Act;
- (d) allow financial statements to be prepared;
- (e) include underlying documentation, such as invoices, contracts and so forth;
- (f) reflect the following details -
 - (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
 - (ii) all sales and purchases and other transactions; and

(1B) O se kamupani e solia po o ua lē mafai ona tausisia le faafuaiupu (1) po o le (1A), ua faia o se soligatulafono ma e noatia i luga o se moliaga ua faamaonia faaetulafono i se sala tupe e lē silia le 100 iunite tau faasalaga.”.

(2) I totonu o le fuaiupu 46(1) o le Tulafono o Faiga Faa Paaga Faava-o-Malo ma Faiga Faa Paaga Faatapulaaina 1998, ia suia e faapea:

“(1) O se faiga faapaaga faava o malo po o se faiga faapaaga faatapulaaina e ao ona tausia o faamaumauga o faamatalaga tau tupe ma o ia faamaumauga e tatau ona:

- (a) sao lelei le faamatalaina o feuiaiga uma faapisinisi;
- (b) fuafuaina i se tulaga talafeagai le sao atoatoa o le tulaga tau tupe a le faiga faapaaga faava o malo po o le tulaga tau tupe a le faiga faapaaga faatapulaaina, i so o se taimi;
- (c) mafai ai e faatonu ona suesueina e faapea o so o se faamatalaga tau tupe e saunia e le faiga faapaaga faava o malo ma le faiga faapaaga faatapulaaina, i lalo o lenei vaega, le tausisia o manaoga o lenei Tulafono;
- (d) avanoa ai mo le saunia o faamatalaga tau tupe;
- (e) aofia ai pepa aloaia taua, e pei o inivoisi, konekarate ma isi faapena;
- (f) atagia ai faamatalaga auiliili nei -
 - (i) o aofaiga uma o tupe maua ma tupe faaalu ma mataupu e faasino i ai tupe maua ma tupe faaalu na faatinoaina;
 - (ii) o oloa uma na faatauina atu ma oloa uma na faatauina mai ma isi feuiaiga faapisinisi; ma

(iii) the assets and liabilities of the relevant international partnership and limited partnership.

(1A) An international partnership or limited partnership must retain all the accounts and records referred to in subsection (1) for seven (7) years after the end of the financial year or accounting period to which they relate.

(1B) A company that contravenes or fails to comply with subsection (1) or (1A) commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.”.

(3) After section 79 of the Trusts Act 2014, insert:

“79A. Accounts to be kept-(1) A Samoan trustee for a foreign trust must keep accounting records and such records should:

- (a) correctly explain all transactions;
- (b) enable the financial position of the foreign trust to be determined with reasonable accuracy at any time;
- (c) allow financial statements to be prepared;
- (d) include underlying documentation, such as invoices, contracts and so forth;
- (e) reflect the following details -
 - (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;

(iii) aseta ma noataga a le faiga faapaaga faava o malo ma faiga faapaaga faatapulaaina talafeagai.

(1A) E ao i se faiga faapaaga faava o malo po o se faiga faapaaga faatapulaaina ona taofia o faamatalaga uma tau tupe ma faamaumauga o faasinomia i totonu o le faafuuiupu (1) mo le fitu (7) tausaga, i le tuanai ai o le faaiuga o le tausaga faaletupe po o le vaitaimi o le tausiga o faamatalaga tau tupe lea e faasino i ai ia faamaumauga.

(1B) O se kamupani e solia po o ua lē tausisia le faafuuiupu (1) po o le (1A), ua faia o se soligatulafono ma e noatia i luga o se moliaga ua faamaonia faaetulafono i se sala tupe e lē silia le 100 iunite tau faasalaga.”.

(3) I le tuanai ai o le fuaiupu 79 o le Tulafono o Mavaega Tausi 2014, ia faaofi e faapea:

“79A. E ao ona tausia faamatalaga tau tupe-(1) E ao i se tausia mavaega Samoa mo se mavaega tausii mai fafo, ona tausia faamaumauga o faamatalaga tau tupe ma o ia faamaumauga e tatau ona:

- (a) sao lelei le faamatalaina o feuaiga uma faapisinisi;
- (b) fuafuaina i se tulaga talafeagai le sao atoatoa o le tulaga tau tupe a le mavaega tausii mai fafo, i so o se taimi;
- (c) avanoa ai mo le saunia o faamatalaga tau tupe;
- (d) aofia ai pepa aloaia taua, e pei o inivoisi, konekarate ma isi faapena;
- (e) atagia ai faamatalaga auiliili nei -
 - (i) aofaiga uma, o tupe maua ma tupe faaalu ma mataupu e faasino i ai tupe maua ma tupe faaalu na faatinoina;

(ii) all sales and purchases and other transactions; and

(iii) the assets and liabilities of the foreign trust.

(2) A Samoan trustee for a foreign trust must retain all the accounts and records referred to in subsection (1) for seven (7) years after the end of the financial year or accounting period to which they relate.

(3) A Samoan trustee for a foreign trust who contravenes or fails to comply with subsection (1) or (2) commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.”.

(ii) o oloa uma na faatauina atu ma oloa uma na faatauina mai ma isi feuaiga faapisinisi; ma

(iii) aseta ma noataga a le mavaega tausi mai fafo.

(2) E ao i se tausi mavaega Samoa mo se mavaega tausi mai fafo ona taofia o faamaumauga uma o faamatalaga tau tupe ma faamaumauga o faasinomia i totonu o le faafuaiupu (1) mo le fitu (7) tausaga, i le tuanai ai o le faaiuga o le tausaga faaletupe po o le vaitaimi o le tausiga o faamatalaga tau tupe lea e faasino i ai ia faamaumauga.

(3) O se tausi mavaega Samoa mo se mavaega tausi mai fafo, o ia lea ua na solia po o ua lē tausisia le faafuaiupu (1) po o le (2), ua na faia o se soligatulafono ma e noatia i luga o se moliaga ua faamaonia faaletulafono i se sala tupe e lē silia le 100 iunite tau faasalaga.”.
