

**SAMOA**

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**2008, No. 11**

**AN ACT to amend the International Companies Act 1988  
and for related purposes.** *[21<sup>st</sup> April 2008]*

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

**PART I  
PRELIMINARY**

**1. Short title and commencement-**(1) This Act may be cited as the International Companies Amendment Act 2008 and shall be read with and form part of the International Companies Act 1988 (the “Principal Act”).

(2) This Act or any part or section thereof shall come into force on a date or dates to be nominated by the Minister.

(3) Notice of commencement of this Act or any part or section thereof shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

**2. Interpretation** - Section 2 of the Principal Act is amended by:

(a) deleting the definition of the term “bearer debenture” and substituting the following definition:

“Bearer debenture” means any debenture of an international company which is either payable to or enforceable by any person, who for the time being lawfully has possession of that debenture, but does not include a debenture lodged with a trustee company as custodian of the document, pursuant to section 15.’

(b) inserting after the definition of the term “Minister” the following definition:

“Money Laundering Authority” means the Money Laundering Authority appointed under the Money Laundering Prevention Act 2007.

(c) deleting in the definition of the term “Share warrant” the words “section 35” and substituting the words “section 36”.

(d) inserting after the definition of the term “Resident secretary” the following definition:

“Satisfactory evidence of identity” means such evidence of identity as is required under the provisions of the Money

Laundering Prevention Act 2007 or any successor legislation and any regulations and Guidelines issued pursuant to that Act.”

**3. Lodging documents** - Section 9 of the Principal Act is amended by:

- (a) inserting in subsection (1) before the words “Every document” the words “Except as provided to the contrary in this Act.”
- (b) inserting in subsection (2) before the words “Every application” the words “Except as provided to the contrary in this Act.”

**4. Registers** - Section 12 of the Principal Act is amended by deleting subsection (2A) and substituting the following:

“(2A) Notwithstanding the provisions of subsection (2), except in any case where the prior written consent of the international company or the trustee company acting for the international company is given or where copies of the memorandum and articles of the company are made available for inspection or copying pursuant to section 28 (1A), the Registrar shall not allow any person to inspect any document or provide any person with a copy or extract of any document, unless the Registrar has given reasonable notice to the international company of the Registrar’s intention to do so, such notice to include details of the relevant documents and the persons who will inspect or be provided with a copy of such documents.”

**5. Issue of bearer debentures** - Section 15 of the Principal Act is amended:

(1) In subsection (1) by inserting a full stop after the words “in dollars” and deleting all the words following the words “in dollars” and thereafter inserting the following:

“The bearer debenture shall be entered in the records of the international company and thereupon the company shall be deemed to have resolved to issue the debenture and the

same shall thereupon be a specialty debt due from the company.”

(2) By deleting subsections (2) and (3) and substituting the following:

“(2) Notwithstanding anything to the contrary in this Act, all bearer debentures issued by an international company shall be physically lodged with the trustee company whose office provides the registered office for the company. The trustee company shall hold the bearer debenture as custodian only of the said documents for the beneficial owner.

“(3) The trustee company shall not release the bearer debenture to the beneficial owner thereof or part with the physical possession of the said document, unless the debenture is to be cancelled by the international company or converted to an ordinary debenture or to registered shares.

“(3A) Where an international company deals with bearer debentures contrary to subsection (3), the company and every officer of the company who is responsible for the contravention commits an offence.

“(3B) The beneficial owner of a bearer debenture shall not transfer, dispose of, or otherwise deal with their interest in the debenture without the approval of the trustee company, in accordance with subsection (3C) and any transfer, disposition or other transaction involving the beneficial interest in the debenture shall be of no legal effect until the trustee company has granted its approval.

“(3C) Where the beneficial owner of a bearer debenture requires that the bearer debenture be redeemed or converted to an ordinary debenture or that the beneficial ownership thereof be transferred or otherwise dealt with, any such request shall only be approved by the trustee company holding the bearer debenture upon receipt of satisfactory evidence of the identity of the person making the request and of any other person who, as a result of the request, will be paid the redemption proceeds or will become an ordinary

debenture holder or become the holder of a beneficial interest in the bearer debenture.

“(3D) If default is made by an international company or a trustee company in complying with the provisions of subsections (2), (3) or (3C), the said company and every officer of the company who is knowingly in default commits an offence.

“(3E) In subsection (6) by deleting the words “or a receipt for such a form, if issued, not having been received by the international company at its registered office in Samoa, duly executed by or for and on behalf of the person to whom it was posted or delivered.”

**6. Transitional provisions for bearer debentures** - The Principal Act is amended by inserting after section 15 the following:

**“15A. Transitional provisions for bearer debentures**

—  
“(1) Every international company that has issued bearer debentures prior to the commencement date of the International Companies Amendment Act 2008, shall within six (6) months from that date, hereinafter referred to as the “transitional period”, cause the said bearer debentures to be lodged with the trustee company whose office provides the registered office for the said international company.

“(2) An international company may apply in writing to the Registrar for an extension of the transitional period, and such application shall be accompanied by -

- (a) a statement of the reasons for the extension of application;
- (b) the prescribed fee; and
- (c) such other information as the Registrar considers necessary,

and the Registrar may extend the transitional period by a further period of six (6) months.

“(3) If a bearer debenture has not been so lodged with the trustee company, within the transitional period or any extension of that period granted under subsection (2), all

rights, powers and privileges exercisable by the beneficial owner of that bearer debenture and all benefits derived from that debenture, shall thereafter be suspended and be of no legal effect, unless and until the bearer debenture is so lodged, hereinafter referred to as the “suspension period”. In the event that at a later time the rights, powers and privileges attaching to the bearer debenture are no longer suspended, the validity of any action of the international company during the suspension period shall not be affected and no adjustments or compensation shall be made or payable in respect of any sum or benefit that would otherwise have accrued in respect of the bearer debenture during the suspension period.

“(4) During the suspension period, the Court may, on the application of any director, liquidator, officer or member of the international company, order on such terms as it sees fit, that a trustee company be appointed to exercise such rights, powers and privileges as the Court may specify, as would be exercisable if the trustee company were the holder of the bearer debenture. The Court may further order that the trustee company shall hold any property payable to the holder of the bearer debenture on such trusts as the Court may direct, provided that no property held pursuant to any such trust shall be distributed, until such time as the bearer debenture has been lodged with a trustee company pursuant to subsection (1) and that trustee company has obtained satisfactory evidence of the identity of the beneficial owner of the bearer debenture.”

**7. Names of companies** - Section 22(2) of the Principal Act is amended by inserting after paragraph (d) the following:

“(e) the words “Gesellschaft mit beschränkter Haftung” or the abbreviation “GmbH”; or”.

**8. Immobilization of bearer shares and share warrants to bearer** - The Principal Act is amended by inserting after section 38 the following:

**“39. Immobilization of bearer shares and share warrants to bearer –**

“(1) Notwithstanding anything to the contrary in this Act, all bearer shares and share warrants to bearer issued by an international company shall be physically lodged with the trustee company whose office provides the registered office for the company and the trustee company shall hold the bearer shares and share warrants to bearer as custodian only of the said documents for the beneficial owner.

“(2) A trustee company shall not release bearer shares or share warrants to bearer to the beneficial owner thereof or part with the physical possession of the said documents, unless the bearer shares are to be cancelled by the international company or converted into registered shares.

“(3) Where an international company deals with bearer shares or share warrants to bearer contrary to subsection (2), the company and every officer of the company who is responsible for the contravention commits an offence.

“(4) The beneficial owner of bearer shares or share warrants to bearer shall not transfer, dispose of, or otherwise deal with the beneficial interest in the shares or share warrants without the approval of the trustee company holding such shares or share warrants in accordance with subsection (5) and any transfer, disposition or other transaction involving the beneficial interest in the bearer shares or share warrants to bearer shall be of no legal effect until the trustee company has granted its approval.

“(5) Where the beneficial owner of a bearer share or share warrant to bearer requires that the said bearer instrument be converted to registered shares or cancelled by the international company or that the beneficial ownership thereof be transferred or otherwise dealt with, any such request shall only be approved by the trustee company holding the bearer instrument, upon receipt of satisfactory evidence of the identity of the person making the request

and of any other person who, as a result of the request, will become a registered shareholder or become the holder of a beneficial interest in the bearer share or share warrant to bearer.

“(6) If default is made by an international company or a trustee company in complying with the provisions of subsections (1), (2) or (5), the said company and every officer of the company who is knowingly in default commits an offence.”

**“39A. Transitional provisions for bearer shares and share warrants to bearer –**

“(1) Every international company that has issued bearer shares or share warrants to bearer prior to the commencement date of the International Companies Amendment Act 2008, shall within six (6) months from that date, hereinafter referred to as the “transitional period”, cause the said shares or share warrants to be lodged with the trustee company whose office provides the registered office for the said international company.

“(2) An international company may apply in writing to the Registrar for an extension of the transitional period, and such application shall be accompanied by -

- (a) a statement of the reasons for the extension of application;
- (b) the prescribed fee; and
- (c) such other information as the Registrar considers necessary,

and the Registrar may extend the transitional period by a further period of six (6) months.

“(3) If a bearer share or share warrant to bearer has not been so lodged with the trustee company, within the transitional period or any extension of that period granted under subsection (2), all rights, powers and privileges exercisable by the beneficial owner of that bearer share or share warrant to bearer and all benefits derived from membership in that international company shall thereafter be suspended and be of no legal effect, unless and until the bearer share or share warrant to bearer is so lodged

(hereinafter referred to as the “suspension period”). In the event that at a later time the rights attaching to the bearer share or share warrant to bearer are no longer suspended, the validity of any action of the international company during the period of suspension shall not be affected and no adjustments or compensation shall be made or payable in respect of any sum or benefit that would otherwise have accrued in respect of the bearer share or share warrant to bearer during the suspension period.

“(4) During the suspension period, the Court may, on the application of any director, liquidator, officer or member of the international company, order on such terms as it sees fit, that a trustee company be appointed to exercise such rights, powers and privileges as the Court may specify, as would be exercisable if the trustee company were the holder of the bearer share or share warrant to bearer. The Court may further order that the trustee company shall hold any property payable to the holder of the bearer share or share warrant to bearer on such trusts as the Court may direct, provided that no property held pursuant to any such trust shall be distributed until such time as the bearer share or share warrant to bearer has been lodged with a trustee company pursuant to subsection (1) or has been surrendered to the trustee company, as the case may be, and that trustee company has obtained satisfactory evidence of the identity of the beneficial owner of the said bearer instrument.”

**9. Issue of shares of par value at a discount** - Section 50(6) of the Principal Act is amended by deleting the words “the provisions of subsections (2) and (3) of section 49 and”.

**10. Instruments of transfer** - Section 66 of the Principal Act is amended by deleting subsection (1) and substituting the following:

“(1) Except in the case of bearer shares, share warrants to bearer or bearer debentures, an international company shall not register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the

company, but this section shall not prejudice any power to register as a shareholder or debenture holder any person to whom the right to any shares or debenture of the company has been transmitted by operation of law.”

**11. Registration of transfer at request of transferor -** Section 68(1) of the Principal Act is amended by deleting the words “a transferor of any share or bearer debenture” and substituting the words “a transferor of any share or debenture” and by inserting after the words “share warrant” the words “to bearer”.

**12. Filing of charges -** Section 72 of the Principal Act is amended by deleting subsection (1A) and substituting the following:

“(1A) Any person who files an instrument or statement with the Registrar, in accordance with subsection (1), shall lodge a copy of the filed instrument or statement with the company’s registered office within seven (7) days of filing.

“(1B) Where the instrument or statement is not filed with the Registrar in accordance with subsection (1) and is not lodged with the company’s registered office in accordance with subsection (1A), the charge shall, so far as any security on the company’s property or undertaking is conferred thereby, and without prejudice to any contract or obligations for the repayment of the money thereby secured, be void against a liquidator and any creditor of the company.”

**13. Filing of charges by foreign companies which become registered under this Act -** Section 74 of the Principal Act is amended in subsections (3), (4) and (5) by deleting the words “subsection (1)” wherever they appear and substituting the words “subsection (2)”.

**14. Registered office of company -** Section 81 of the Principal Act is amended by inserting after subsection (2) the following:

“(2A) The trustee company providing the registered office for an international company may inform the Registrar, upon prior written notice to the said international company, that the trustee company no longer intends to provide the registered office for the said international company.

“(2B) Upon receipt of a notice from the trustee company under subsection (2A), the Registrar shall give notice to the said international company, at its last registered office, of the Registrar’s intention to strike off the name of the company from the register pursuant to section 197 unless another registered office is appointed pursuant to subsection (3) within one (1) month from the date thereof.”

**15. Directors** - Section 83(1) of the Principal Act is amended by deleting the word “shall” and substituting the word “may”.

**16. Where register to be kept** - Section 106 of the Principal Act is deleted and the following substituted:

**“106 Where register to be kept -**

“(1) The register of members of an international company shall be kept at the registered office of the company or such other place as the directors determine.

“(2) Where the register of members is not kept at the registered office, a copy of the register shall be maintained at the registered office, within one (1) month of the date of incorporation.

“(3) Notwithstanding subsection (2), an international company registered prior to the commencement date of the International Companies Amendment Act 2008, shall be allowed a period of six (6) months from the said date to comply with the provisions of this section.

“(4) If default is made by an international company in complying with this section, the company and every officer of the company who is knowingly in default commits an offence.”

**17. Circumstances in which a company may be wound up compulsorily** - Section 159(1)(b) of the Principal Act is amended by deleting the words “lodging an annual or other statutory return”.

**18. Sales other than at proper value** - Section 191(3) of the Principal Act is amended by deleting the words “in subsection (6), the liquidator, subject to subsection (7)” and substituting the words “in subsection (4), the liquidator, subject to subsection (5)”.

**19. Offences by officers of companies in liquidation** - Section 193(4) of the Principal Act is amended by deleting the words “unless the Minister has given prior consent in writing under Part XII”.

**20. Powers of the Registrar to strike companies off the register** - Section 197 of the Principal Act is amended:

(1) In subsection (1) by deleting paragraph (f) and substituting the following:

“(f) Which is being wound up, and has no liquidator acting or whose affairs have been fully wound up; or

“(g) Where the trustee company that has been providing the registered office for the international company informs the Registrar, pursuant to section 81(2A), that it no longer intends to provide the registered office for the said company.”

(2) By deleting subsection (1A) and substituting the following:

“(1A) Where the Registrar intends to strike off the name of an international company under this section, the Registrar shall give notice of such intention to the company at its last registered office in Samoa.

“(1B) Where the international company is being struck off the register for failure to pay its prescribed annual renewal fee or penalties, pursuant to subsection (1)(b), the

notice by the Registrar shall state that if an answer showing cause to the contrary is not received within two (2) months from the date thereof, the Registrar will strike the name of the company off the register.

“(1C) Where the international company is being struck off the register for any other reason, the notice by the Registrar shall state that if an answer showing cause to the contrary is not received within one (1) month from the date thereof, the Registrar will strike the name of the company off the register.”

**21. Translation of instruments** - Section 216 of the Principal Act is amended by inserting after subsection (3) the following:

“(4) Where any instrument, certificate, contract or document or a certified copy thereof has been filed with the Registrar under this Act in the English language, an international company may also file a translation of the said document into any other language. The said translation must either be certified by the translator, pursuant to subsection (3) or certified by the trustee company submitting the said document as being a true translation executed by a translator fluent in English and that other language.”

**22. General penalty provisions** - Section 219 of the Principal Act is amended:

(1) In subsection (1) by deleting the figure “\$500” and substituting the figure “\$5,000” and by deleting the figure “\$1,000” and substituting the figure “\$10,000”.

(2) In subsection (2) by adding the numbers “15, 39, 91, 106” and by deleting the figure “\$1,000” and substituting the figure “\$10,000”.

(3) In subsection (3) by deleting the figure “\$10,000” and substituting the figure “\$50,000” and by deleting the figure “\$50,000” and substituting the figure “\$100,000”.

**23. Confidentiality** - Section 227 of the Principal Act is amended:

(1) By deleting the heading “Secrecy” and substituting the heading “Confidentiality”;

(2) In subsection (4) by inserting in paragraph (b) after the words “by a director of a trustee company to the Minister” the words, “the Registrar or a director of any other trustee company,” and by inserting a comma after the words “of Samoa”;

(3) By deleting the word “or” at the end of subsection 4(c);

(4) By deleting the word “and” at the end of paragraphs (f) and (g) of subsection (4);

(5) By deleting the full stop at the end of subsection (4)(j) and substituting a semi-colon and by inserting thereafter the following:

“(k) by the Registrar to a domestic or foreign agency responsible for the prevention and suppression of terrorism, the Money Laundering Authority or any other domestic or foreign agency responsible for the prevention of money laundering, provided that -

    “(i) the Registrar is satisfied that the intended recipient or agency is subject to adequate legal restrictions on disclosures which shall include the provision of an undertaking on confidentiality; and

    “(ii) the information is required for the purposes of the prevention and suppression of terrorism or the enforcement of the Money Laundering Prevention Act 2007 or any other like law only;

“(l) by the Registrar or the Minister to any other person in what the Registrar or the Minister, as the case may be, believes are the best interests of Samoa or to uphold the integrity of the jurisdiction as an offshore financial centre or to otherwise ensure compliance with this Act; or

“(m) by any person to ensure compliance with the Money Laundering Prevention Act 2007 and the Prevention and Suppression of Terrorism Act 2002.”

(6) In subsection (4) by deleting the words “Provided that the Minister may in the Ministers absolute discretion prohibit any disclosure of any information permitted by this Act.”

(7) In subsection (6) by deleting the word “secrecy” and substituting the word “confidentiality.”

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**The International Companies Amendment Act 2008 is  
administered by the Samoa International Finance Authority.**