

SAMOA

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2008, No. 7

AN ACT to provide for the licensing and supervision of International Mutual Funds and Collective Investment Schemes, and for managers and administrators.

[25th March 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 Mutual Funds Act 2008.

(2) This Act commences in whole or in Part or in section or sections upon notice to that effect issued by the Minister (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-(1) In this Act, unless the context otherwise requires:

“administrator” means a person who:

- (a) for valuable consideration provides an international mutual fund with administrative services alone or together with accounting services; or
- (b) is entitled to provide to international mutual funds (by whatever name called) such services and facilities as provided in paragraph (a) under the laws of a recognised country or jurisdiction;

“approved fee” means a fee determined by notice by the Minister published in the Savali;

“approved form” means a form approved by the Minister;

“auditor” means a person who is a registered company auditor under the International Companies Act 1987;

“Authority” means the Samoa International Finance Authority established under the Samoa International Financial Authority Act 2005;

“certificate of compliance” means a certificate issued by the competent authority responsible for the regulation and supervision of mutual funds in a country or jurisdiction, other than Samoa, which verifies that the fund in question:

- (a) is registered or licensed in its country or jurisdiction; and
- (b) has paid all licence or registration fees; and
- (c) is not subject to adverse regulatory review or sanction; and
- (d) is in compliance with all terms and conditions of its prospectus;

“company” means a body corporate, wherever incorporated or constituted;

“constitutional documents” means:

- (a) in the case of a company, the memorandum and articles of association or other instrument of incorporation; and
- (b) in the case of a partnership, the agreement or other instrument by which the partnership is formed and governed; and
- (c) in the case of a unit trust, the trust deed or other instrument by which the unit trust is organised or governed;

“controller” has the same meaning as provided in section 2 of the International Banking Act 2005;

“Court” means the Supreme Court of Samoa;

“custodian” means the person who holds the property of the international mutual fund in safe keeping;

“dollar and “\$” means a unit of currency of the United States of America;

“financial year” means the period not exceeding twelve months at the end of which the balance of the accounts is struck, and which may be up to eighteen months in the case of the first or last period or when the period is changed;

“fit and proper” has the meaning given in section 3;

“investor” means a person who owns or holds shares (as herein defined) issued by an international mutual fund;

“international financial services legislation” has the same meaning as in section 2 of the Samoa International Finance Authority Act 2005;

“international mutual fund” or “fund” means:

- (a) a company that is incorporated or registered under the International Companies Act 1987; or
- (b) a partnership registered under the International Partnership and Limited Partnership Act 1998; or
- (c) a unit trust that is registered under the International Trusts Act 1987; or
- (d) other similar body formed or organised under international financial services legislation, which:

(i) collects and pools investor funds for the purpose of collective investment, and

(ii) issues shares (as herein defined) that entitle the holder to receive on demand or within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company, the partnership, the unit trust or other similar body, as the case may be; and

(iii) solicits and accepts investments in its fund only from non-residents of Samoa, and includes:

(1) an umbrella fund whose shares are split into a number of different class funds or sub-funds; and

(2) a fund which has a single investor which is a mutual fund not registered or recognised under this Act, but excludes any arrangements which are designated by regulations as not being international mutual funds;

“licensee” includes any public fund registered under Part III, any private or professional fund recognised under Part IV and any manager or administrator licensed under Part V;

“manager” means a person, not being an officer or an employee of a person licensed under this Act or an international mutual fund which has delegated management functions to a person licensed under this Act, who:

(a) for valuable consideration, provides an international mutual fund with management services alone, or together with investment advice or administrative services; or

(b) is entitled to provide to international mutual funds (by whatever name called), such services or advice as provided in

paragraph (a) under the laws of a recognised country or jurisdiction;

“material particular” includes such information regarding a promoter or, investment plan or, investment products or, terms and conditions of investment and financial information regarding an international mutual fund that would influence a reasonable person in a decision to invest or not invest in the said fund, or such additional information as may be prescribed by regulations;

“Minister” means the Minister of Finance;

“Money Laundering Authority” means the Money Laundering Authority established under the Money Laundering Prevention Act 2007;

“non-resident” has the same meaning as in section 2 of the International Banking Act 2005;

“officer” includes:

(a) a director, alternate director, the president, a vice-president, and any other person designated as an officer of a company by by-law, by resolution of the directors or by any other instrument; and

(b) a general partner of a partnership; and

(c) a trustee of a unit trust;

“partnership” means a contractual relation which subsists between persons carrying on a business in common with a view of profit and includes a partnership formed under the laws of Samoa or of any other country or jurisdiction notwithstanding any statutory definition thereof to the contrary;

“person” includes an individual natural person, an international mutual fund, any company, partnership, unit trust or trustee;

“private fund” means an international mutual fund:

(a) the constitutional documents of which specify that it will have no more than two hundred and fifty investors, who cannot act in a nominee capacity, and that the minimum aggregate equity interest

purchasable by a prospective investor is twenty-five thousand dollars or its equivalent in any other currency; or

(b) the constitutional documents of which specify that the making of an invitation to subscribe for or purchase shares issued by the international mutual fund is to be made on a private basis, and includes an invitation which is made:

(i) to specified persons (howsoever described) and is not calculated to result in shares becoming available to other persons or to a large number of investors; or

(ii) by reason of a private or business connection between the person making the invitation and the investor; or

(c) which is designated as a private fund by regulations;

“professional fund” means an international mutual fund:

(a) the shares of which are made available only to professional investors and the initial investment in which, in respect of the majority of each of such investors, is not less than 100,000 dollars or its equivalent in any other currency, provided that the said minimum investment limit shall not apply in respect of any investment made by the manager, administrator, promoter or underwriter of the professional fund; or

(b) is designated as a professional fund by regulations;

“professional investor” means a non-resident of Samoa:

(a) who has signed a declaration that the person, whether individually or jointly with a spouse, has a net worth in excess of one million dollars or whose annual income in the last two years was at least \$200,000, with a reasonable expectation of at least the same annual income for the current year, and that the person consents to being treated as a professional investor; or

- (b) whose ordinary business involves, whether for the person's own account or the accounts of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property, of the fund; and includes:
- (i) an international bank licensed under the International Banking Act 2005 or a bank licensed in a recognised country or jurisdiction; or
 - (ii) an international insurance company licensed under the International Insurance Act 1988 or an insurance company licensed in a recognised country or jurisdiction; or
 - (iii) a mutual fund regulated in a recognised country or jurisdiction; or
 - (iv) an international trust registered under the International Trusts Act 1987 with a minimum of one million dollars in assets; or
 - (v) any entity owned by any of the above classes of investors;
- “promoter” means a person, acting alone or in conjunction with others, directly or indirectly, who takes the initiative in forming or organising the business of an international mutual fund, but does not include an underwriter who receives underwriting commission without taking any part in the founding or organising of the international mutual fund business;
- “prospectus” means any prospectus or similar document the purpose of which is to make an invitation to the public or any section thereof, to subscribe for or purchase shares issued by a public fund;
- “public fund” means an international mutual fund which is not a private fund or a professional fund;
- “recognised country or jurisdiction” means any country or jurisdiction listed in the Schedule to this Act;
- “Registrar” means the Registrar of International Mutual Funds appointed under section 4 and includes any person acting under the Registrar's authority;

“security” means any document or instrument constituting evidence of title to, or interest in, the capital, assets, property, profits, earnings or royalties of any person, as herein defined, and includes:

- (a) bonds, debentures, notes, mortgages and other evidence of indebtedness; and
- (b) any share, stock, document or instrument commonly known as a security; and
- (c) any document or instrument constituting evidence of an option, subscription or other interest in a security or constituting evidence of an interest in an association of legatees or heirs;

“share” means a share in the share capital of an international mutual fund company and includes an interest in an international mutual fund partnership and a unit in an international fund unit trust;

“underwriter” means a person who:

- (a) as principal, agrees to purchase shares issued by international mutual funds with a view to offering them to the public; or
- (b) as agent for an international mutual fund, offers for sale or sells to the public shares issued by the fund;

“unit trust” means an arrangement creating a trust under the laws of Samoa or of any other country or jurisdiction, in which unit holders participating in the arrangement are the beneficiaries of the trust.

(2) In this Act:

- (a) every company incorporated and every partnership formed or unit trust organised under the laws of Samoa for the purpose of carrying on business as an international mutual fund or as a manager or administrator of an international mutual fund, shall, if carrying on business anywhere outside Samoa, be deemed to be carrying on business from within Samoa;

- (b) the expression “carrying on business from within Samoa” includes carrying on business outside Samoa from a place of business or a registered office within Samoa; and
- (c) notwithstanding the provisions of any other law, fines may be imposed in US dollars and expressed in dollar amounts.

3. Meaning of “fit and proper” - For the purposes of this Act, in determining whether a person is a “fit and proper” person, regard shall be had to all circumstances, including that person’s:

- (a) honesty, integrity and reputation; and
- (b) competence and capability; and
- (c) financial soundness.

PART II ADMINISTRATION

4. Registrar of International Mutual Funds-(1) There shall be a Registrar of International Mutual Funds who shall be appointed by the Authority to administer this Act.

(2) It is the duty of the Registrar:

- (a) to supervise and regulate international mutual funds, managers and administrators in accordance with this Act and any other applicable law; and
- (b) to maintain a general review of the international mutual fund industry, including the maintenance of adequate policies and procedures for “know your customer” and anti-money laundering; and
- (c) whenever the Registrar thinks fit, to examine, and in such manner as the Registrar thinks necessary, the affairs or business of any international mutual fund, manager or administrator for the purpose of satisfying the Registrar that the provisions of this Act and any other applicable law are being complied with and that the said fund, manager or administrator is in a sound financial position; and

- (d) to examine and make recommendations to the Authority with respect to applications for registration and licences granted under this Act.
- (3) The Registrar has the power for the purposes of this Act or the regulations:
 - (a) to determine the forms to be used for the purposes of this Act and the matters to be specified in such forms; and
 - (b) to issue directions and policy guidelines; and failure by any licensee to comply with such directions or policy guidelines shall be taken into consideration when any action is proposed to be taken under sections 32 or 33.
- (4) The Registrar may delegate any of the Registrar's powers or duties under this Act to another officer of the Authority and thereupon this Act shall be read as if those powers or duties were originally conferred or imposed upon that officer.
- (5) The Registrar may, upon request by any person to whom this Act applies and upon payment of the prescribed fee, issue to such person a certificate of compliance in such form as the Registrar thinks fit, verifying the registration, recognition or licensing of the person, as the case may be, and that no actions provided under sections 32 or 33 have been instituted against the person.
- (6) The Registrar or any employee of the office of the Registrar or the Authority shall not knowingly have any financial interest in any person registered, recognised or licensed under this Act.

5. International Mutual Funds Advisory Committee -

- (1) The Authority may appoint a committee, called the International Mutual Funds Advisory Committee, which shall consist of not more than five persons from the private sector with adequate knowledge and experience in the mutual funds industry and the Registrar who shall be an ex-officio member of the Committee.

(2) The Authority shall designate one of the persons appointed under subsection (1) as Chairperson of the Committee.

(3) The International Mutual Funds Advisory Committee shall:

- (a) advise the Authority on any matter referred to it by the Authority relating to the mutual funds industry; and
- (b) on its own motion, report and make recommendations to the Authority on any matter relating to international mutual funds as it sees fit; and
- (c) have power to establish, subject to the approval of the Authority:
 - (i) its own working rules and procedures; and
 - (ii) sub-committees as it thinks necessary.

(4) The Authority shall make provision in its annual budget to fund the operations of the Committee.

6. Records of the Registrar-(1) The Registrar shall keep separate registers for all:

- (a) registered public funds; and
- (b) recognised private or professional funds; and
- (c) licensed managers and administrators.

(2) The registers required under subsection (1) shall show:

- (a) the information required under section 29 (a), (b) and (c) with respect to each registered public fund, recognised private or professional fund and licensed manager or administrator; and
- (b) the date of registration, recognition or licence, as the case may be; and
- (c) the status of such registration, recognition or licence and if cancelled, the date of such cancellation.

(3) Registers kept by the Registrar shall be in electronic form, or any other form the Registrar determines.

(4) Subject to section 41, the Register shall be open to public inspection during ordinary office hours on payment of the approved fee.

**PART III
PUBLIC FUNDS**

7. Registration-(1) No public fund shall carry on its business or manage or administer its affairs in or from within Samoa unless it is registered under this Act.

(2) Every person, including every officer of the public fund commits an offence where, not being a registered public fund under this Act, knowingly:

- (a) acts as a public fund and carries on its business or manages or administers its affairs in or from within Samoa; or
- (b) holds itself out as being registered or otherwise entitled to act as a registered public fund; or
- (c) takes or uses any name, title, addition or description implying or likely to lead any person to believe that the fund is so registered.

(3) In any proceedings in respect of an offence under this section, the following shall, in the absence of proof to the contrary, be sufficient evidence of the matters contained therein:

- (a) a certificate signed by the Registrar to the effect that at the time of the alleged offence, the defendant was not a registered public fund in Samoa; and
- (b) a certificate signed by the Authority to the effect that the defendant was at the time of the alleged offence acting as a registered public fund or holding itself out in such capacity.

(4) Any person convicted of an offence under this section shall be liable for imprisonment for a term not exceeding two years or to a fine not exceeding 50,000 dollars or to both such fine and imprisonment.

8. Application for registration-(1) A public fund shall apply to the Authority for registration to carry on business in or from within Samoa.

(2) Every application for registration shall be submitted to the Registrar in the approved form and shall be accompanied by:

- (a) a certified copy of the instrument by which the applicant is constituted; and

- (b) the approved fee; and
- (c) evidence, in such form as the Authority or the Registrar shall specify, verifying:
 - (i) that the laws of the jurisdiction under which the applicant is constituted have been complied with; and
 - (ii) the nature and scope of the business to be carried on by the applicant in or from within Samoa, including the name of any other country or jurisdiction where the applicant is carrying on or intends to carry on business; and
 - (iii) that the promoters are of sound reputation and fit and proper to form or organise the business of an international mutual fund; and
 - (iv) that the administration of the international mutual fund will be undertaken by persons who have sufficient expertise to administer the international mutual fund and who are fit and proper to be directors or, as the case may be, managers or officers in their respective positions; and
 - (v) that the business of the international mutual fund and any offer of equity interests in it will be carried out in a proper manner; and

(d) the notices required under section 29.

(3) In addition to the documents, information, and evidence which shall accompany an application under subsection (1), an applicant shall, if required to do so by the Authority or the Registrar, furnish to the Registrar such additional documents, information or evidence as the Authority or the Registrar may require.

9. Application for approval to be registered-(1) The promoters of a public fund that is proposed to be formed, may apply to the Authority for approval to register such proposed public fund upon being lawfully constituted under the laws of

Samoa or of any other country or jurisdiction and upon complying with the requirements of this Act.

(2) An application for approval under subsection (1) shall be:

- (a) in the approved form, setting out the particulars of the proposed public fund; and
- (b) accompanied by the approved fee.

(3) The approval of the Authority shall:

- (a) be in such form as the Authority may direct; and
- (b) be valid for a period of three months from the date it is granted, subject to there being no change that the Authority considers material in any of the particulars contained in the application for approval.

(4) The promoters of a proposed public fund may, upon the expiry of the three months period referred to in subsection (3)(b), apply for the renewal of the Authority's approval subject to:

- (a) supplying such documents or information as the Authority may require; and
- (b) payment of the approved fee.

10. Power to grant registration or approval-(1) The Authority may, in its discretion, grant or refuse to grant:

- (a) registration under section 8; or
- (b) approval to be registered under section 9.

(2) Notwithstanding subsection (1), the Authority shall refuse to grant registration or approval, as the case may be, if:

- (a) the public fund has a name which the Authority determines to be undesirable or misleading; or
- (b) the Authority determines that it is not in the interest of investors or in the public interest that such registration or approval be granted.

(3) The Authority may grant registration or approval to be registered subject to such terms and conditions, if any, as it thinks fit.

(4) If terms and conditions are imposed under subsection (3), the Authority may from time to time, vary or revoke any of those terms and conditions or impose any additional terms or conditions.

(5) The Authority need not give reasons for any decision made under this section.

(6) Despite any other law, the Court of Appeal, the Supreme Court and the District Court shall not have jurisdiction to hear and determine any matter touching upon or concerning this section excepting any matter concerning Part II of the Constitution (Fundamental Rights).

11. Registration procedure-(1) Where the Authority grants registration pursuant to section 10, it shall direct the Registrar accordingly and the Registrar shall:

- (a) register the public fund in the register maintained under section 6; and
- (b) issue a certificate to the registered public fund as directed by the Authority showing the date of registration.

(2) Where the Authority grants approval to be registered under section 9, the promoters of the proposed public fund shall, within the three months period referred to in section 9 (3) (b), deliver to the Registrar:

- (a) satisfactory proof that the proposed public fund is lawfully constituted in Samoa or elsewhere; and
- (b) the approved fee; and
- (c) the notices required under section 29.

(3) If the Registrar is satisfied that the proposed public fund has complied with the requirements of subsection (2), the Registrar shall register the public fund and issue to it a certificate of registration in accordance with the procedure set out in subsection (1).

(4) The Registrar shall not register the proposed public fund if the public fund:

- (a) has not received the approval for registration pursuant to section 9; or
- (b) has not complied with any of the requirements of subsection (2).

12. Accounting records and financial statements-(1)

Every registered public fund shall:

- (a) maintain adequate accounting records and prepare financial statements in respect of each financial year in accordance with generally accepted accounting principles; and
 - (b) keep such accounting records and financial statements available for examination by the Registrar or any person authorised by the Registrar at:
 - (i) its place of business or registered office in Samoa; or
 - (ii) such other place as its officers may see fit, provided that copies of such records and statements or such other documents or information as the Registrar may consider adequate are kept at its place of business or registered office in Samoa.
- (2) The financial statements required under subsection (1) shall be:
- (a) audited by an auditor acceptable to the Registrar (in this Act called “the approved auditor”) in accordance with generally accepted auditing standards; and
 - (b) accompanied by the report of the approved auditor which shall include a statement of the accounting principles under which the statements have been prepared and a statement of the auditing standards which have been applied in the audit of such statements; and
 - (c) provided to or made available for examination by all investors of the registered public fund; and
 - (d) filed with the Registrar within 6 months of the end of that financial year.
- (3) If default is made by a registered public fund in complying with the provisions of this section, the said fund and every officer of the fund who is knowingly in default commits an offence and is liable on conviction to a fine not exceeding 1,000 dollars for every day during which the offence continues.

13. Duty to publish and file a prospectus-(1) No registered public fund shall in or outside Samoa make an invitation to the public or any section thereof to purchase its shares unless, prior to such invitation, it publishes in writing a prospectus signed by or on behalf of the board of directors (by whatever name called) or, in the case of a partnership, unit trust or other similar body, the equivalent governing body of the fund which approved the contents of the prospectus or authorised its publishing, and files a copy thereof with the Registrar.

(2) Every prospectus shall:

- (a) provide full and accurate disclosure of all such information as investors would reasonably require and expect to find for the purpose of making an informed investment decision; and
- (b) contain a summary statement of investors' rights as provided in section 15; and
- (c) be accompanied by or contain reference to the availability of the financial statements for the last financial year of the fund and the auditor's report thereon if the fund has completed a financial year in operation.

(3) If all or any part of the prospectus is not in the English language, the Registrar may require that an English translation of the prospectus or that part of the prospectus, verified in a manner satisfactory to the Registrar, be filed along with the prospectus.

(4) Where in a prospectus any of the disclosures required under subsection (2) (a) ceases to be accurate in a material particular, the registered public fund shall, within twenty-one days of the change occurring, publish an amendment thereto giving accurate disclosures and provide a copy thereof to each of its investors and to the Registrar.

(5) If default is made by a registered public fund in complying with the provisions of subsection (4), the said fund and every officer of the fund who is knowingly in default commits an offence and is liable on conviction to a fine not exceeding 1,000 dollars for every day during which the offence continues.

14. Certificate of compliance - (1) Every registered public fund, wherever it is constituted, which carries on business outside Samoa under the laws of another country or jurisdiction, shall every year, within three months of the end of its financial year, file with the Registrar a certificate of compliance from the competent authority that is responsible for the regulation and supervision of the conduct of its business in that other country or jurisdiction.

(2) A registered public fund to which subsection (1) applies is deemed to have complied with that subsection if such fund provides evidence to the satisfaction of the Registrar that the required certificate could not be obtained for reasons beyond the control of the public fund.

(3) Where a registered public fund which carries on business outside Samoa carries on business in more than one country or jurisdiction other than Samoa, the certificate required to be filed under subsection (1) shall be from the competent authority in the country or jurisdiction in or from which it carries on its principal business.

(4) If default is made by a registered public fund in complying with the provisions of subsection (1), the said fund and every officer of the fund who is knowingly in default commits an offence and is liable on conviction to a fine not exceeding one 1,000 dollars for every day during which the offence continues.

15. Investors' rights - (1) If a registered public fund publishes a prospectus or any amendment thereto that contains any misrepresentation relating to any of the disclosures required under section 13 (2) (a), a person who purchased any shares pursuant to such prospectus or amendment thereto is deemed to have relied upon the misrepresentation and shall have the rights provided in subsection (2).

(2) A person referred to in subsection (1) may elect to exercise a right of action:

(a) for the rescission of the purchase; or

(b) for damages,

jointly and severally against the fund, and every member of the board of directors (by whatever name called) or, in the case of a

partnership, unit trust or other similar body, every member of the equivalent governing body who, while aware of the misrepresentation, or would have been aware of the misrepresentation had the person made reasonable investigations consistent with the person's duties, authorised the signing of or approved the prospectus or amendment thereto and consented to its publication and filing or caused it to be signed or published and filed.

(3) For the purposes of this section, "misrepresentation" means:

- (a) an untrue or misleading statement of any of the disclosures required under section 13 (2) (a); or
- (b) an omission to disclose any of such disclosures.

(4) No person is liable under this section if the person proves that the purchaser purchased the shares offered by the prospectus or amendment thereto with knowledge of the misrepresentation.

(5) The right of action for rescission or for damages conferred by subsection (2) is in addition to and without derogation from any other right the plaintiff may have at law.

16. Limitation of action and amount recoverable-(1)

Notwithstanding any law to the contrary, any action pursuant to section 15(2) may not be commenced after:

- (a) one hundred and eighty days from the day that the plaintiff first had knowledge of the misrepresentation; or
- (b) one year from the date of the purchase transaction that gave rise to the cause of action,

whichever is later.

(2) In any action under section 15 (2), the amount recoverable shall not exceed the amount at which the shares were purchased or subscribed, including any fees or other charges paid by the plaintiff.

PART IV
PRIVATE AND PROFESSIONAL FUNDS

17. Recognition-(1) Subject to subsection (5), no private or professional fund shall carry on its business or manage or administer its affairs in or from within Samoa unless it is recognised under this Act.

(2) Subject to subsection (5), every person, including every officer of the private or professional fund who is knowingly in default, commits an offence against this Act who, not being duly recognised under this Part:

- (a) acts as a private or professional fund and carries on its business or manages or administers its affairs in or from within Samoa; or
- (b) holds itself out as being recognised or otherwise entitled to act as a recognised private or professional fund; or
- (c) takes or uses any name, title, addition or description implying or likely to lead any person to believe that the fund is so recognised.

(3) In any proceedings in respect of an offence under this section, the following shall, in the absence of proof to the contrary, be sufficient evidence of the matters contained therein:

- (a) a certificate signed by the Registrar to the effect that at the time of the alleged offence, the defendant was not a recognised private or professional fund in Samoa; and
- (b) a certificate signed by the Authority to the effect that the defendant was at the time of the alleged offence acting as a recognised private or professional fund or holding itself out in such capacity.

(4) Any person convicted of an offence under this section shall be liable for imprisonment for a term not exceeding two years or to a fine not exceeding 50,000 dollars or to both such fine and imprisonment.

(5) Despite subsection (1), a professional fund may carry on its business or manage or administer its affairs in or from within Samoa for a period of up to fourteen days without being recognised under this Act.

18. Application for recognition-(1) A private or professional fund that is constituted under the laws of Samoa shall apply to the Registrar for recognition under this Act.

(2) Every application for recognition pursuant to subsection (1) shall be submitted to the Registrar in the approved form and shall be accompanied by:

- (a) the approved fee; and
- (b) evidence, in such form as the Registrar shall specify, verifying that it:
 - (i) is a private or professional fund within the meaning of this Act; and
 - (ii) is lawfully constituted under the laws of Samoa; and
- (c) the notices required under section 29.

(3) A private or professional fund that is constituted outside Samoa may apply for recognition under this Act.

(4) Every application for recognition pursuant to subsection (3) shall be submitted to the Registrar in the approved form and shall be accompanied by:

- (a) the approved fee; and
- (b) evidence, in such form as the Registrar shall specify, verifying that it:
 - (i) is a private or professional fund within the meaning of this Act; and
 - (ii) is lawfully constituted under the laws of another country or jurisdiction; and
- (c) the notices required under section 29; and
- (d) a statement setting out the nature and scope of its business.

(5) In addition to the documents, information and evidence which shall accompany an application under subsections (2) or (4), an applicant shall, if required to do so by the Registrar,

furnish such additional documents, information or evidence as the Registrar may require.

(6) In the case of a professional fund, the matters required by subsections (2) and (4) shall be provided to the Registrar within fourteen days of the commencement of its business.

19. Power to grant recognition-(1) The Registrar may, in the Registrar's discretion, grant or refuse to grant recognition under section 18.

(2) Notwithstanding subsection (1), the Registrar shall refuse to grant recognition if:

- (a) the applicant fails to comply with the requirements of section 18; or
- (b) the fund has a name which the Registrar determines is undesirable or misleading; or
- (c) the Registrar determines that it is not in the interest of investors or in the public interest that such recognition should be granted.

(3) The Registrar may grant recognition subject to such terms and conditions, if any, as the Registrar thinks fit.

(4) If terms and conditions are imposed under subsection (3), the Registrar may from time to time, vary or revoke any of those terms and conditions or impose any additional terms or conditions.

(5) Where the Registrar refuses to grant recognition on any of the grounds set out in subsection (2), the provisions of section 10 (5) and 10 (6) shall apply *mutatis mutandis*.

20. Recognition Procedure - Where the Registrar grants recognition to a private or professional fund, the Registrar shall:

- (a) enter the particulars relating to the private or professional fund in the register maintained under section 6; and
- (b) issue a certificate of recognition to the private or professional fund showing the date of recognition.

PART V
MANAGERS AND ADMINISTRATORS

21. Licensing-(1) No person shall, in or from within Samoa, carry on or hold themselves out as carrying on business as a manager or administrator of an international mutual fund unless that person is licensed for the purpose under this Act.

(2) Subsection (1) does not apply to a person who:

- (a) is not ordinarily resident or domiciled in Samoa; and
- (b) is a manager or administrator of a mutual fund (by whatever name called) under the laws of a recognised country or jurisdiction; and
- (c) has received written permission from the Authority to carry on business as a manager or administrator of a mutual fund in or from within Samoa.

(3) Every person, including every officer who is knowingly in default, commits an offence against this Act who, not being duly licensed under this Part or exempted from licensing under subsection (2):

- (a) acts as a manager or administrator of an international mutual fund; or
- (b) holds themselves out as being licensed or otherwise entitled to act as a licensed mutual fund manager or administrator; or
- (c) takes or uses any name, title, addition or description implying or likely to lead any person to believe that the person is so licensed or entitled.

(4) In any proceedings in respect of an offence under this section, the following shall, in the absence of proof to the contrary, be sufficient evidence of the matters contained therein:

- (a) a certificate signed by the Registrar to the effect that at the time of the alleged offence, the defendant was not a licensed fund manager or administrator; and
- (b) a certificate signed by the Registrar to the effect that at the time of the alleged offence, the defendant was not exempted from licensing under subsection (2); and

(c) a certificate signed by the Authority to the effect that the defendant was at the time of the alleged offence acting as a licensed fund manager or administrator.

(5) Any person convicted of an offence under this section shall be liable for imprisonment for a term not exceeding two years or to a fine not exceeding 50,000 dollars or to both such fine and imprisonment.

22. Application for a licence-(1) Every person who desires to obtain a licence under this Part shall make application to the Authority to carry on business in or from within Samoa as:

- (a) a manager of a mutual fund; or
- (b) an administrator of a mutual fund; or
- (c) both a manager and administrator of a mutual fund.

(2) Every application shall be submitted to the Registrar in the approved form and shall be accompanied by:

- (a) the approved fee; and
- (b) a statement of the financial and human resources and administrative facilities available to the applicant for the competent and efficient conduct of its business; and
- (c) evidence, in such form as the Authority shall specify, verifying:
 - (i) that the applicant and every person who is, or is to be, a controller of the applicant is a fit and proper person to be engaged in the proposed business; and
 - (ii) that the applicant has sufficient expertise, resources and facilities to administer or manage a mutual fund; and
 - (iii) that the business will be administered by persons who are fit and proper persons to be directors or, as the case may be, managers or officers in their respective positions; and
- (d) such other documents or information as the Authority may reasonably require for the purpose of considering the application.

23. Power to grant licences-(1) The Authority may, in its discretion, grant or refuse to grant a licence to any applicant.

(2) The Authority shall refuse to grant a licence if it is determined that it is not in the public interest that such licence should be granted.

(3) The Authority may grant a licence subject to such terms and conditions, if any, as it thinks fit.

(4) If terms and conditions are imposed under subsection (3), the Authority may from time to time, vary or revoke any of those terms and conditions or impose any additional terms or conditions.

(5) Where the Registrar refuses to grant a licence on the ground set out in subsection (2), the provisions of section 10 (5) and 10 (6) shall apply *mutatis mutandis*.

24. Licensing procedure - Where the Authority grants a licence to an applicant, it shall direct the Registrar accordingly and the Registrar shall:

- (a) enter the particulars of the applicant in the register maintained under section 6; and
- (b) issue a licence to the applicant as directed by the Authority showing the date on which the licence is granted.

25. Restriction on issue or transfer of shares in licensed manager or administrator-(1) Subject to this section, where a licensed fund manager or administrator is a company, no shares in or other securities whatsoever of the said company shall be issued and no issued shares or the beneficial interest in shares or other securities of the company shall be transferred or disposed of in any manner without the prior written approval of the Registrar.

(2) In subsection (1), the reference to shares being issued or transferred or disposed of, includes any issue or transfer or disposition that would result in any change in beneficial ownership or control of the said company.

(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 that results in no change in beneficial ownership or control.

(4) The Registrar may, in respect of a licensed mutual fund manager or administrator that is a company and whose shares are publicly traded on a stock exchange recognised by the Authority, waive the obligation to obtain approval under subsection (1), and any such waiver:

(a) shall be subject to a condition that the licensed mutual fund manager or administrator shall, as soon as reasonably practicable, notify the Registrar of:

(i) any change in control of the said company; or

(ii) the acquisition by any person or group of persons of shares representing more than ten per cent of the issued share capital or total voting rights of the said company; or

(iii) the acquisition by any person or group of persons of shares representing more than ten per cent of the issued share capital or total voting rights of the parent company of the said company; and

(b) shall be subject to a condition that the said licensed fund manager or administrator shall, as soon as reasonably practicable, provide such information to the Registrar, and within such period of time, as the Registrar may require for the purpose of enabling an assessment as to whether the persons acquiring control or ownership of the said company in the circumstances set out in paragraph (a) are fit and proper persons to have such control or ownership; and

(c) shall be subject to such terms and other conditions as the Registrar may deem necessary.

(5) If default is made by a licensed fund manager or administrator in complying with the provisions of this section, the said fund manager or administrator and every one of its officers who is knowingly in default commits an offence.

26. Approval of directors-(1) A licensed fund manager or administrator shall not appoint a director, chief executive officer or similar senior officer or a general partner, as the case may be, unless:

- (a) the Registrar's prior written approval has been obtained; or
- (b) the Registrar has exempted the licensed fund manager or administrator from the obligation to obtain the Registrar's approval.

(2) If default is made by a licensed fund manager or administrator in complying with the provisions of this section, the said fund manager or administrator and every one of its officers who is knowingly in default commits an offence.

27. Annual audits-(1) Every licensed fund manager or administrator shall:

- (a) maintain adequate accounting records and prepare financial statements in respect of each financial year in accordance with generally accepted accounting principles; and
- (b) keep such accounting records and financial statements available for examination by the Registrar or any person authorised by the Registrar at:
 - (i) its place of business or registered office in Samoa; or
 - (ii) such other place as its officers may see fit, provided that copies of such records and statements or such other documents or information as the Registrar may consider adequate are kept at its place of business or registered office in Samoa.

(2) The financial statements required under subsection (1) shall be:

- (a) audited by an auditor acceptable to the Registrar (in this Act called "the approved auditor") in accordance with generally accepted auditing standards; and

- (b) accompanied by the report of the approved auditor which shall include a statement of the accounting principles under which the statements have been prepared and a statement of the auditing standards which have been applied in the audit of such statements; and
 - (c) filed with the Registrar within 6 months of the end of that financial year.
- (3) The Authority may exempt a licensed mutual fund manager or administrator from complying with the provisions of this section, where the Authority determines that it would not be contrary to the public interest and where all interested parties, including potential investors, have been informed that such an exemption has been granted.
- (4) Unless an exemption from the requirements of this section has been granted under subsection (3), if default is made by a licensed fund manager or administrator in complying with the provisions of this section, the said fund manager or administrator and every one of its officers who is knowingly in default commits an offence.

28. Code of Practice-(1) The Authority may by Order prescribe a Code of Practice directing the holder of a licence under section 23 to comply with the requirements of the Code, which may include but is not limited to matters relating to:

- (a) conduct of business; and
 - (b) financial resources; and
 - (c) the giving of notice of specified events; and
 - (d) advertising; and
 - (e) clients' money and custody of investments; and
 - (f) accounting records and audit requirements.
- (2) The Code of Practice prescribed under subsection (1) may provide for such enforcement mechanisms as the Authority may consider necessary to ensure compliance with the provisions of the Code and such enforcement mechanisms may include the creation of offences punishable in accordance with the provisions of section 47.

**PART VI
GENERAL**

29. Notices to accompany applications - In addition to any other requirement under this Act, every application made under this Act for registration, recognition or a licence made under this Act shall be accompanied by a notice of:

- (a) the address of the applicant's place of business and its address for service in Samoa; and
- (b) the name and address of a person resident in Samoa who is authorised to represent the applicant and to accept service on its behalf; and
- (c) the address of any place of business that the applicant has outside Samoa.

30. Notification of changes-(1) A licensee shall notify the Registrar in writing of any material change in the particulars set out in the application for registration, recognition or licence, as the case may be, or in the documents, information or evidence accompanying that application or in any documents, information or evidence given under sections 8, 9, 22 or 29.

(2) Notification of any material change pursuant to subsection (1) shall be given within 21 days of the date of the said material change.

(3) Every person who fails to comply with the provisions of subsections (1) or (2) commits an offence and is liable on conviction to a fine not exceeding 1,000 dollars for every day during which the offence continues.

31. Annual Fees-(1) Where:

- (a) a public fund is granted registration under Part III; or
- (b) a private or professional fund is granted recognition under Part IV; or
- (c) a person is granted a licence under Part V,

there shall be payable for the year in which such registration, recognition or licence is granted the approved fee.

(2) On or before the 31st day of March every year following the year in which the registration or, recognition or licence is granted, there shall be payable the approved annual renewal fee.

(3) In any case where the approved fee for annual renewal has not been paid by the due date, the amount shall be recoverable together with the prescribed penalty in any court of competent jurisdiction (including the Supreme Court and the District Court) as a debt due to the Authority.

32. Powers of the Authority and Registrar in respect of mutual funds-(1) Whenever the Authority, in the case of a registered public fund, or the Registrar, in the case of a recognised private or professional fund, is of the opinion that the said fund:

- (a) has ceased to carry on business in or from within Samoa; or
 - (b) has contravened any provision of this Act, the regulations or any term, condition, restriction or limitation attached to the fund's certificate; or
 - (c) has been convicted of an offence under this Act or of a criminal offence in any country or jurisdiction; or
 - (d) has knowingly supplied false, misleading or inaccurate information or failed to disclose information required for the purposes of any provision of this Act or the regulations; or
 - (e) is or is likely to become unable to meet its obligations as they fall due; or
 - (f) is carrying on business or attempting to carry on business or is winding up its business voluntarily in a manner detrimental to the interests of its investors or creditors or to the public interest; or
 - (g) is declared bankrupt or is being wound up or otherwise dissolved; or
 - (h) is not being managed or directed in a fit and proper manner or that a person holding the position of promoter, director, manager or officer of the fund is not a fit and proper person to hold the respective position,
- the Authority or the Registrar, as the case may be, may forthwith take one or more of the following actions:

(i) require the international mutual fund forthwith to take such measures as considered necessary in relation to its business;

(ii) impose conditions or further conditions, as the case may be, upon the certificate and may amend or revoke any such condition;

(iii) require the removal and replacement of any promoter, director, manager or officer of the fund;

(iv) appoint a person to advise the fund on the proper conduct of its business;

(v) appoint a person to assume control of the affairs of the fund;

(vi) if the international mutual fund is a company, apply to the Court for an order winding up the company;

(vii) if the international mutual fund is a unit trust governed by the laws of Samoa, apply to the Court for an order directing the trustee to wind up the fund;

(viii) if the international mutual fund is a partnership governed by the laws of Samoa, apply to the Court for an order to dissolve the partnership;

(ix) apply to the Court for an order to take such action as the Authority or the Registrar, as the case may be, considers necessary to protect the interests of the investors and creditors of the international mutual fund;

(x) cancel the certificate of registration or recognition, as the case may be.

(2) Where the Court makes an order on an application made in accordance with subsection (1) (vii), the Court may grant the trustee such indemnity as it considers appropriate out of the assets of the international mutual fund.

(3) A person appointed under subsection (1) (iv) or (v) (hereinafter referred to as the “appointee”) is appointed at the expense of the relevant fund and any expenses incurred by the Authority or the Registrar (hereinafter referred to as the “appointor”), by virtue of the appointment, is an amount due to the Authority and payable by the said fund.

(4) Any amount due to the Authority under subsection (3) shall be recoverable in any court of competent jurisdiction (including the Supreme Court and the District Court) as a debt due to the Authority.

(5) A person appointed under subsection (1) (v) has the duty and all powers necessary, to the exclusion of any officer, to administer the affairs of the international mutual fund in the best interests of the investors and creditors of the said fund, including the power to terminate the business of the international mutual fund.

(6) An appointee shall:

- (a) supply the appointor with such information in respect of the international mutual fund as is specified by the appointor; and
- (b) within three months of the appointment, or within such other period as the appointor may specify, submit a report on the affairs of the international mutual fund to the appointor with recommendations, where appropriate; and
- (c) if the appointment is not terminated after submitting the report referred to in paragraph (b), shall subsequently supply to the appointor such other information, reports and recommendations as the appointor may specify.

(7) If the appointee fails to comply with any obligation under subsections (5) and (6), or in the appointor’s opinion is not carrying out the obligations in respect of the relevant mutual fund satisfactorily, the appointor may revoke the appointment and appoint some other person in the appointee’s place.

(8) On receipt of any information or a report under subsection (6) in respect of an international mutual fund, the appointor may:

- (a) require the international mutual fund to reorganise its affairs in a manner specified by the appointor; or
 - (b) take any action provided for in subsection (1).
- (9) If it appears to the Authority that an international mutual fund is carrying on or attempting to carry on business in or from within Samoa and is doing so in breach of sections 7(1) or 17(1), the Authority has the power to apply to the Court for such orders as it thinks fit to preserve the assets of the investors in the international mutual fund, and the Court has power to grant such orders.

33. Powers of the Authority in respect of licensed managers and administrators-(1) Whenever the Authority is of the opinion that a licensed manager or administrator:

- (a) has ceased to carry on business in or from within Samoa; or
- (b) has contravened any provision of this Act, the regulations or the Code of Practice prescribed under section 28 or any term, condition, restriction or limitation attached to their licence; or
- (c) has been convicted of an offence under this Act or of a criminal offence in Samoa or any other country or jurisdiction; or
- (d) has knowingly supplied false, misleading or inaccurate information or failed to disclose information required for the purposes of any provision of this Act or the regulations; or
- (e) is or is likely to become unable to meet their obligations as they fall due; or
- (f) is carrying on business or attempting to carry on business or is winding up its business voluntarily in a manner detrimental to the interests of the investors or creditors of any mutual fund they are managing or administering or detrimental to the interests of its creditors or to the public interest; or
- (g) is declared bankrupt or is being wound up or otherwise dissolved; or

(h) is not being managed or directed in a fit and proper manner or that a person holding the position of controller, director, manager or officer of the fund management or administration business is not a fit and proper person to hold the respective position,

the Authority may take one or more of the following actions:

(i) require the fund manager or administrator forthwith to take such measures as considered necessary in relation to its business; or

(ii) impose conditions or further conditions, as the case may be, upon the licence and may amend or revoke any such condition; or

(iii) require the removal and replacement of any controller, director, manager, officer or general partner of the said business; or

(iv) appoint a person to advise the manager or administrator on the proper conduct of its business; or

(v) appoint a person to assume control of the affairs of the manager or administrator relating to its fund business; or

(vi) where the manager or administrator is a company, make application to the Court for the winding up of the said company; or

(vii) where the manager or administrator is a partnership governed by the laws of Samoa, apply to the Court for an order to dissolve the partnership; or

(viii) make application to the Court for such other order as the Authority considers necessary to protect the interests of the investors or creditors of any mutual fund under their administration or management or the interests of its creditors or of the public interest; or

(ix) cancel the licence of the manager or administrator, as the case may be.

(2) A person appointed under subsection (1)(iv) or (v) (hereinafter referred to as the “appointee”) is appointed at the expense of the relevant manager or administrator and any expense incurred by the Authority by virtue of the appointment is an amount due to the Authority and payable by the said manager or administrator.

(3) Any amount due to the Authority under subsection (2) shall be recoverable in any court of competent jurisdiction (including the Supreme Court and District Court) as a debt due to the Authority.

(4) A person appointed under subsection (1) (v) has the duty and all the powers necessary, to the exclusion of any other person (other than a liquidator or receiver) to administer the affairs of the said business in the best interests of the investors and creditors of any mutual fund under its management or administration and the creditors of the said manager or administrator, including the power to terminate the said business.

(5) An appointee shall:

- (a) supply the Authority with such information in respect of the manager or administrator and its business as is specified by the Authority; and
- (b) within three months of the appointment, or within such other period as the Authority may specify, submit a report on the affairs of the manager or administrator to the Authority with recommendations, where appropriate; and
- (c) if the appointment is not terminated after submitting the report referred to in paragraph (b), shall subsequently supply to the Authority such other information, reports and recommendations as the Authority may specify.

(6) If the appointee fails to comply with any obligation under subsections (4) and (5), or in the Authority’s opinion is not carrying out the obligations in respect of the relevant manager or administrator satisfactorily, the Authority may

revoke the appointment and appoint some other person in the appointee's place.

(7) On receipt of any information or a report under subsection (5) in respect of a manager or administrator, the Authority may:

- (a) require the manager or administrator to reorganise its affairs in a manner specified by the Authority; or
- (b) take any action provided for in subsection (1).

(8) If it appears to the Authority that a person is acting or carrying on business as a manager or administrator and is doing so in breach of section 21(1), the Authority has the power to apply to the Court for such orders as it thinks fit to preserve the assets of the investors in any mutual fund being administered or managed by that person, and the Court has power to grant such orders.

34. Power of search-(1) A Judge or Registrar of the Court who is satisfied by information on oath of the Registrar, the Authority or a police officer:

- (a) that there are reasonable grounds for suspecting that an offence against this Act has been, is being or is about to be committed and that evidence of the commission of the offence is to be found at any premises or place so specified; or
- (b) that any books, records or documents (hereinafter referred to as "records"), that ought to have been produced under section 39 and have not been produced, are to be found at any such premises or place,

may grant a search warrant authorising the Authority, the Registrar or a police officer and such other persons as may be reasonably necessary for assistance:

- (i) to enter those premises or place, using reasonable force, if necessary; and
- (ii) to search the premises or place and any person in the premises or place; and

(iii) if it is necessary to do so, to break open and search anything on the premises or place in which records may be stored or concealed; and

(iv) take possession of, and secure against interference any records or computer or electronic system or other storage system which the Authority or the Registrar or a police officer believes to contain or store any records that appear to indicate that any offence against this Act has been, is being or is about to be committed or that ought to have been produced under section 39.

(2) In this section, “premises” includes:

- (a) land, whether or not covered by buildings; and
- (b) any structure, whether or not attached to land; and
- (c) any means of transport.

(3) Nothing in this section authorises a person to personally body search a person of the opposite sex.

(4) Any person who obstructs or interferes with the Authority, the Registrar or any other person in the exercise of any powers conferred under this section commits an offence.

35. Obligations of auditors-(1) If an auditor, in the course of carrying out an audit on the accounts of a public fund or of a licensed manager or administrator, becomes aware or has reason to believe that the international mutual fund, manager or administrator:

- (a) is or is likely to become unable to meet its obligations as they fall due; or
- (b) is carrying on or attempting to carry on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors, or to the investors or creditors of any mutual fund it is managing or administering; or
- (c) is carrying on or attempting to carry on business without keeping sufficient or any accounting records to allow its accounts to be properly audited,

the auditor shall immediately give the Authority written notice of the auditor's knowledge or belief and the reasons for that knowledge or belief.

(2) Despite any other law, no civil, criminal or disciplinary proceedings shall lie against any auditor arising from the disclosure in good faith of information to the Authority pursuant to this section.

36. Appeals-(1) Subject to subsection (2), any person affected adversely may, within 21 days of the date of the decision appealed from, appeal to the Court, from:

- (a) any decision to cancel a certificate under section 32;
- or
- (b) any decision to cancel a licence under section 33; or
- (c) any decision by the Authority to take any of the actions under section 32(1) or 33(1); or
- (d) any decision by the Registrar to take any of the actions under section 32(1),

PROVIDED THAT any person affected adversely by a decision of the Authority or the Registrar may, upon notice to the Authority or the Registrar, as the case may be, apply to the Court for leave to extend the time within which the notice of appeal must be filed, and the Court, upon hearing such application, may extend the time prescribed by this section, as it deems fit.

(2) The only grounds for an appeal under this section shall be that the decision was ultra vires or was an unreasonable exercise of the powers of the Authority or the Registrar, as the case may be.

(3) In determining any appeal under this section the Court may, if it thinks fit:

- (a) exercise any of the powers conferred on the Authority or the Registrar, as the case may be; or
- (b) cancel or amend any decision to which the appeal relates; or
- (c) confirm any such decision.

(4) The decision of the Court on appeal proceedings brought before it under this section shall be final.

(5) An appeal against a decision of the Authority or the Registrar, as the case may be, shall not have the effect of suspending the execution of such a decision.

(6) Despite any other law, the Court of Appeal, the Supreme Court and the District Court shall not have jurisdiction to hear and determine any matter touching upon or concerning this section excepting for such jurisdiction as is explicitly conferred on such Court by this section and any matter concerning Part II of the Constitution (Fundamental Rights).

37. Power to grant exemptions-(1) Upon the recommendation of the Registrar, the Authority may, if it is satisfied that to do so would not be prejudicial to the public interest, direct that all or any of the provisions of this Act or the regulations shall:

- (a) not apply; or
 - (b) apply subject to such modifications as the Authority may specify in the direction,
- to any person or any class of persons.

(2) A direction under this section may:

- (a) be subject to any conditions as the Authority may see fit to specify therein; and
- (b) be revoked at any time at the discretion of the Authority.

38. Restriction on the use of the words “fund” or “mutual fund”-(1) Except with the written consent of the Registrar, no person, other than the holder of a valid international mutual fund certificate or licence issued under this Act, or with respect to the use of the word “fund” only, a segregated fund international company, incorporated or registered under the Segregated Fund International Companies Act 2000, shall:

- (a) use or continue to use the words “fund”, “mutual fund” or “international mutual fund” either in English or in any other language, in the name, description or title under which that person is carrying on business in or from within Samoa; and

- (b) make or continue to make any representation in any advertisement, billhead, circular, letter, letterhead, notice, paper or in any other manner that that person is carrying on business as a fund, mutual fund or international mutual fund.
- (2) Every person who contravenes this section commits an offence.

39. Access to information and records-(1) For the purpose of discharging their duties under this Act and the regulations and subject to section 41, the Registrar or any person acting under the Registrar's authority, may at all reasonable times, in writing, direct any person to whom this Act applies to:

- (a) furnish information; or
 - (b) provide access to any records, books, or other documents,
- relating to the business of that person being carried or purported to be carried on under this Act which, in the opinion of the Registrar, are necessary to enable the Registrar to ascertain or ensure compliance with the provisions of this Act or the regulations.

(2) The Registrar can request any information, explanation, matter or thing from any person who the Registrar has reasonable grounds to believe is carrying on or purports to be carrying on international mutual fund business in contravention of sections 7 (1) or 17 (1) or is carrying on or purports to be carrying on business as a manager or administrator in contravention of section 21 (1).

(3) Any person who fails to comply with a direction or request given in accordance with subsection (1) or (2) is guilty of an offence.

40. Immunity-(1) No civil, criminal or administrative liability, including damages or penalties shall be imposed against Samoa, the Government of Samoa, the Minister, the Authority, the Registrar or any officer, servant or agent of the Authority or the Registrar or any person acting pursuant to any authority conferred by the Authority or the Registrar, as the case

may be, in respect of any act or matter done or omitted to be done in good faith in the exercise or purported exercise of their respective functions conferred by or under this Act or regulations.

(2) The legal costs of defending any action instituted against the Minister, the Authority, the Registrar, or any board member, officer, servant or agent of the Authority or any person acting pursuant to any authority conferred by the Authority or the Registrar, as the case may be, shall be borne by the Authority.

41. Preservation of confidentiality-(1) Subject to this section and except for the purpose of the performance or exercise of their duties or functions under this Act or when lawfully required to do so by any court of competent jurisdiction within Samoa, the Authority, the Registrar or any officials or officers thereof, including any person acting under their authority, shall not disclose any information relating to any application by any person under the provisions of this Act or to the affairs of a licensee or of any customer of a licensee which the Authority, the Registrar or other person, as the case may be, has acquired in the performance or exercise of such duties or functions under this Act.

- (2) Subsection (1) shall not apply to a disclosure:
- (a) to the Minister, the Attorney General or an officer of the Authority; or
 - (b) to any person for the purpose of discharging any duty or exercising any power under this Act or regulations; or
 - (c) in respect of the affairs of a licensee or a customer of a licensee with the authority of the licensee or the customer of a licensee, as the case may be, which has been voluntarily given; or
 - (d) where the information is already in the public domain; or
 - (e) where the information disclosed is in a summary form or in statistics expressed in a manner that does not enable the identification of any particular individual or transaction; or

- (f) for the purpose of legal proceedings in connection with:
- (i) the winding up or dissolution of a licensee; or
 - (ii) the appointment or duties of a receiver of a licensee.
- (3) The Authority or the Registrar may disclose to a foreign or domestic regulatory authority, including a trading or a security or exchange authority, or a domestic or foreign agency responsible for the prevention and suppression of terrorism, or the Money Laundering Authority or any other like agency responsible for the prevention of money laundering, information about a registered or recognised international mutual fund or a licensed manager or administrator, provided that:
- (a) the Authority or the Registrar, as the case may be, has been satisfied that the intended recipient agency or authority is subject to adequate legal restrictions on disclosures which shall include the provision of an undertaking on confidentiality; and
 - (b) the information is required for the purposes of mutual fund regulation or the prevention and suppression of terrorism or the enforcement of the Money Laundering Prevention Act 2007 or any other like law only and is not related directly or indirectly to the imposition, calculation or collection of taxes or the enforcement of exchange control regulations.
- (4) Every person who commits an offence under this section shall be liable upon conviction to imprisonment for a term not exceeding five (5) years or to a fine not exceeding 50,000 dollars or both such fine and imprisonment.

42. Breach of professional confidentiality-(1) Except as required by or provided for under the laws of Samoa, every person commits an offence who:

- (a) divulges any information, in Samoa or elsewhere, which the person has become aware of in the person's capacity as an officer, employee, or

authorised agent of a licensee, or as an officer or employee of an approved auditor, in relation to:

(i) any international mutual fund business transacted in or from within Samoa; or

(ii) the transfer of money and property into or out of Samoa in the course of any international mutual fund business; or

(iii) the account of any person with a licensee or any item of such an account or the fact of any person having, or having had such an account; or

(b) attempts to induce others to breach professional confidentiality in relation to any such matters.

(2) Notwithstanding subsection (1), it shall not be an offence under this section to divulge the information referred to in subsection (1)(a):

(a) to the Registrar if directed to do so by the Registrar pursuant to section 39; or

(b) to the person on whose behalf the international mutual fund business is being carried out; or

(c) to any person, with the express written consent of the person on whose behalf the international mutual fund business is being carried out; or

(d) to an officer or employee of the same licensee in the performance of the person's duties as an officer or employee; or

(e) to the Authority or the Registrar by the auditor or former auditor of a licensee with respect to the audited accounts or returns of the licensee; or

(f) to ensure compliance with the Money Laundering Prevention Act 2007 and the Prevention and Suppression of Terrorism Act 2002 or like laws; or

(g) to the Authority or the Registrar in the best interests of Samoa and to uphold the integrity of the jurisdiction.

(3) Nothing in this section shall prevent the Court from requiring any person to give evidence or produce documents in any proceedings in the Court of any facts relevant in those

proceedings that the person could otherwise be required to give or produce.

(4) Every person who commits an offence under this section shall be liable upon conviction to imprisonment for a term not exceeding five (5) years or to a fine not exceeding 50,000 dollars or both such fine and imprisonment.

43. Exemption from taxation and stamp duties -

Notwithstanding anything contained in any other enactment:

- (a) an international mutual fund; and
- (b) an investor in any such international mutual fund (other than a trustee company, registered under the Trustee Companies Act 1987, who invest funds in an international mutual fund, in their own right and not on behalf of non-residents of Samoa),

are in all respects exempt from any and all of the provisions of the Income Tax Act 1974 and the Stamp Duty Ordinance 1932.

44. Exemption from currency and exchange controls-(1) Notwithstanding anything contained in any other enactment, an international mutual fund shall be exempt from any currency and exchange control restrictions or regulations.

(2) No foreign exchange levy shall be imposed or be payable in respect of fund business conducted by an international mutual fund.

45. No other business licence required - Except as provided by this Act, no other business licence, including a licence under the Business Licences Act 1998, shall be required to operate as an international mutual fund or a manager or administrator in or from within Samoa.

46. False or misleading information - Any person who:

- (a) wilfully makes a misrepresentation in any document required to be filed, furnished or delivered under this Act or the regulations; or

- (b) wilfully makes any statement or gives any information required for the purposes of this Act or the regulations that the person knows to be false or misleading; or
 - (c) knowingly fails to disclose any fact or information required to be disclosed for the purposes of this Act or the regulations,
- commits an offence.

47. Offences and penalties-(1) Every person who commits an offence against this Act and any regulations issued hereunder for which no penalty is provided, otherwise than in this section, is liable upon conviction to imprisonment for a term not exceeding one year or to a fine not exceeding 10,000 dollars or to both and, if the offence is a continuing one, to a further fine not exceeding 500 dollars for every day on which the offence continues.

(2) A prosecution for an offence under this Act may be commenced within five years from the date of the commission of the offence but not thereafter.

48. Regulations - The Head of State, acting on the advice of Cabinet, may make regulations:

- (a) prescribing fees, charges and penalties payable under this Act; or
- (b) designating arrangements which are not mutual funds; or
- (c) designating mutual funds or a class or classes thereof as private or professional mutual funds; or
- (d) designating a class or sub-classes of a public fund; or
- (e) defining, for the purposes of this Act, terms or expressions used in this Act that are not defined in this Act; or
- (f) prescribing any matters relating to:
 - (i) the constitution, powers and duties of the manager, administrator and custodian; or
 - (ii) the issue and redemption of shares; or
 - (iii) the appointment, removal and powers and duties of auditors; or

- (iv) the restriction or regulation of investment and borrowing powers; or
- (v) the preparation of periodical reports; or
- (vi) the rights of investors; or
- (vii) the contents of constitutional documents, in respect of a public fund or a sub-class of such fund; or
- (viii) the contents of the prospectus of a public fund or a sub-class of such fund; or
- (g) prescribing any matter required to be or which may be prescribed under this Act; or
- (h) generally for the better administration of the Act and for carrying out the intent and purpose of the provisions of the Act.

49. Transitional-(1) Any person performing the functions of a manager or an administrator who, on the commencement date, is carrying on any business or engaged in any activity in relation to which the person is required to be licensed under this Act shall, within three (3) months of the commencement date, comply with the requirements of this Act.

(2) Any person who, on the commencement date, is carrying on any business or engaged in any activity as an international mutual fund shall, within nine (9) months from that date, comply with the provisions of this Act.

(3) Where a person fails to comply with subsection (2), it shall pay a non-compliance penalty of 5,000 dollars for each month or part thereof during which it fails to comply with that subsection up to a period of twelve months from the commencement date.

(4) Notwithstanding any other provision of this Act, if after the period of twelve months referred to in subsection (3) a person fails to comply with subsection (2), the person commits an offence and may be proceeded against under sections 7, 17 or 21, as the case may be.

(5) Where a person is proceeded against under subsection (4), it shall, in addition to any other penalty imposed on it, pay the non-compliance penalty to which it is liable under subsection (3).

50. Amendment of the Schedule – The Authority may, by notice published in the Savali, amend the Schedule where the Authority deems fit.

SCHEDULE

Recognised Countries or Jurisdictions (Section 2)

The following Countries or Jurisdiction are recognised for the purposes of this Act:

1. All countries that are members of the European Union from time to time
2. Australia
3. Bahamas
4. Barbados
5. Bermuda
6. British Virgin Islands
7. Brunei
8. Canada
9. Cayman Islands
10. China
11. Chinese Taipei
12. Dubai
13. Gibraltar
14. Guernsey
15. Hong Kong
16. India
17. Isle of Man
18. Japan
19. Jersey

20. Malaysia
21. Mexico
22. New Zealand
23. Panama
24. Singapore
25. South Africa
26. Switzerland
27. United States of America

**The International Mutual Funds Act 2008 is administered by the
Samoa International Finance Authority.**