

**SAMOA**

## Arrangement of Provisions

- |   |                        |
|---|------------------------|
| 1. Short title and commencement               | 3. Filing of charges   |
| 2. Subscribers to a Memorandum of Association | 4. Register of members |
|   | 5. Confidentiality     |

---

**2009, No. 3****AN ACT to amend the International Companies Act 1988.***[3<sup>rd</sup> February 2009]*

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

**1. Short title and commencement-**(1) This Act may be cited as the International Companies Amendment Act 2009, and it shall be read with and form part of the International Companies Act 1988 (the “Principal Act”).

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

**2. Subscribers to a Memorandum of Association –** Section 18(1) of the Principal Act is amended by deleting paragraphs (c) and (d) and replacing them with the following:

- “(c) the full name of the subscriber or subscribers to the memorandum; and
- (d) that the subscriber or subscribers to the memorandum desire the formation of an international company.”

**3. Filing of charges** – Section 72 of the Principal Act is amended by deleting subsection 1(A) and subsection (1B) and replacing them with the following:

“(1A) Where the instrument or a statement is not lodged with the Registrar in accordance with subsection (1), 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 repayment of the money secured by the charge, be void against a liquidator and any creditor of the company.

(1B) Any person who files an instrument or statement with the Registrar in accordance with subsection (1) must either:

- (a) forward a copy of the filed instrument or statement to the registered office of the company to which the instrument or statement relates within seven (7) days of it being filed; or
- (b) request that the Registrar give notice of the lodgement of the instrument or statement to the registered office of the company to which the instrument or statement relates.

(1C) A request under subsection (1B)(b) shall be subject to the payment of an additional fee as fixed from time to time by the Registrar.

(1D) The failure by the Registrar to give any notification requested under subsection (1B)(b) shall not affect the validity of any charge conferred by the instrument or statement, and the Authority shall not be liable for any consequence arising from such a failure.”

**4. Register of members** – Section 106 of the Principal Act is amended by deleting the words “one (1) month” from subsection (2) and replacing them with the words “six (6) months”.

**5. Confidentiality** - Section 227 of the Principal Act is repealed and replaced with the following:

**“227. Certain information to be kept confidential-**(1) For the purposes of this section, information or communications of an international company or a foreign company registered under this Act (whether in Samoa or elsewhere) are “information or communications to which this section relates”, if the information or communication relates to or concerns:

- (a) the shareholding in or beneficial ownership of any share or shares in such a company;
  - (b) the identity of any member of such a company or the interest (legal or beneficial) of any such member in such a company;
  - (c) the management or officers of such a company;
  - (d) any of the business, financial or other affairs or transactions of such a company;
  - (e) the assets or liabilities of such a company; or
  - (f) the contents of any register maintained by such a company.
- (2) Any person or entity who:
- (a) divulges information or communications to which this section relates;
  - (b) attempts, offers or threatens to divulge information or communications to which this section relates; and
  - (c) induces or attempts to induce other persons to divulge information or communications to which this section relates;
  - (d) incites, abets, counsels or procures any person to divulge information or communications to which this section relates; or

- (e) is knowingly involved with the divulging of information or communications to which this section relates,

commits an offence against this Act.

(3) Notwithstanding subsection (1) and subject to subsection (4), it shall not be an offence under this section if information or communications to which this section relates is divulged to the extent reasonably required in the circumstances:

- (a) by an officer of an international company or a foreign company or a trustee company, to the Registrar or the Authority for the purpose of complying with the provisions of this Act;
- (b) by an officer of a trustee company to a director of that trustee company, or by a director of a trustee company to the Authority in what he or she believes are the best interests of Samoa to uphold the integrity of the jurisdiction as an offshore financial centre or to otherwise ensure compliance with this Act;
- (c) by an officer of an international company or a foreign company to any person for the purpose of carrying on the business of the company -

**PROVIDED THAT** the phrase “carrying on the business of the company” shall not include the compliance with any demand or request for information by any foreign government or any court or tribunal of any country other than Samoa where the divulging of the information will, or is likely to, result in the payment of any tax, other penalty or any fine by the company;

- (d) by an officer of an international company or a foreign company to any foreign government or any court or tribunal of any country other than Samoa but only if and to the extent that the court in Samoa so directs having been

satisfied that the information is required and will be used solely for the purposes of an investigation or prosecution of any person in relation to the sale, or laundering of the proceeds of sale of any prohibited narcotic substances, whether that sale or laundering occurred in Samoa or elsewhere;

- (e) by any person to a liquidator, or to an officer of an international company, foreign company or trustee company in the performance of his or her duties as an officer;
- (f) by an officer of an international company or a foreign company to a member of the company where all of the directors of that company consent to such disclosure (or otherwise in accordance with section 107);
- (g) by an officer of an international company or a foreign company to any other person where all of the directors of that company consent to such disclosures;
- (h) by the Registrar in making available for inspection and copying under the provisions of Section 28(1A), a copy of the company's memorandum and articles of association and any alterations to them; and
- (i) by the Registrar or any public officer or any statutory body or authority of Samoa in vetting, verifying and investigating applicants for all off-shore licences and registrations issued by the Government of Samoa pursuant to any offshore finance legislation, including the International Banking Act 2005, the International Insurance Act 1988 and the Trustee Companies Act 1988;
- (j) by the Registrar or any public officer in making available for inspection an index of company names and their registered offices;

- (k) by the Registrar to a domestic or foreign agency responsible for the prevention and suppression of terrorism, if the information is required for the purposes of the prevention and suppression of terrorism;
  - (l) by the Money Laundering Prevention Authority or any other domestic or foreign agency responsible for the prevention of money laundering if the information is required for the purposes of enforcement of the Money Laundering Prevention Act 2007 or any other law making provisions in relation to the prohibition or control of money laundering activities;
  - (m) by the Registrar or the Minister to any other person if the Registrar or the Minister believes the divulging of the information or communications to be -
    - (i) in the best interests of Samoa;
    - (ii) necessary to uphold the integrity of the jurisdiction as an offshore financial centre; or
    - (iii) necessary to ensure compliance with any provision of this Act;
  - (n) by any person to ensure compliance with the Money Laundering Prevention Act 2007 and the Prevention and Suppression of Terrorism Act 2002.
- (4) Notwithstanding subsection (3), the Authority may in its absolute discretion:
- (a) prohibit any disclosure of any information permitted by this Act; or
  - (b) require that any information that is provided be subject to any restriction on its disclosure, or the giving of an undertaking that it shall be kept confidential.
- (5) In recognition of the desirability of maintaining confidentiality in respect of the activities of all international companies and foreign companies registered under this Act,

the Authority may do all things which, in its opinion, are necessary to give effect to the provisions of this section.

(6) This section shall apply to every international company and to every foreign company to the extent to which that information relates to any:

- (a) branch of the foreign company in Samoa; or
- (b) any business which the company conducts in Samoa; or
- (c) to any person associated with the company who is a lawful resident of Samoa.

(7) Nothing in this section shall prevent the Court from requiring any person to produce documents or to give evidence in any criminal proceedings or in any civil proceedings alleging fraud or other dishonesty, if the document or evidence is relevant in such proceedings under the laws of Samoa.

**227A. Court proceedings relating to confidential information-**(1) All civil proceedings relating to international companies commenced in any Court:

- (a) under the provisions of this Act; or
- (b) for the purpose solely of determining the rights or obligation of officers, members or holders of debentures; or
- (c) relating to any appeal from a decision concerning proceedings referred to in paragraphs (a) or (b),

shall be heard in camera, and no details of the proceedings may be published by any person.

(2) The provisions of subsection (1) shall not apply if the Court orders that:

- (a) the hearings are to be open to the public; or
- (b) that publication may be made of all or any part of the proceedings.

**227B. Procedures for obtaining court orders for the disclosure of confidential information-**(1) Subject to subsections (2) to (5), a Court may order that the records and registers of an international company are to be

deposited with the Registrar and that such records, books and registers, and the entries in the Registrar's registers and records relating to that company are to be made available by the Registrar for inspection in accordance with the order of the Court, if:

- (a) in any proceedings for winding-up an international company the Court is satisfied that the international company or any officer of the company has failed to comply with any provision of this Act; or
- (b) an international company or any officer of the company is convicted by any Court of any offence under this Act.

(2) No application in any court proceedings may be made for an order requiring the production of documents in accordance with subsection (1) unless notice of the application, together with copies of all supporting documents, are served on:

- (a) the Registrar, prior to the application being heard, and at a time which is sufficient for the Registrar to make arrangements to be represented at the hearing of the application; and
- (b) all persons who are to be the subject of the order to produce and deposit the documents.

(3) A Court may dispense with the requirement to comply with subsection (2)(b) only if it is satisfied on evidence produced by the applicant that the interests of justice require that the order be made without notice being given to a person under subsection (2)(b), including evidence indicating a real likelihood that the documents will be destroyed, removed from the jurisdiction or otherwise handled so as to defeat the interests of justice.

(4) Where a court makes an order under subsection (1) without service being required under subsection (2)(b), the Court shall:

- (a) require the service of the order, and the application and all supporting documents, on all persons who are the subject of the order,



and any other person likely to be affected by the order; and

- (b) fix a date for the further hearing of the application at which all persons affected by the order shall be entitled to be heard; and
- (c) at the further hearing, either confirm the order, or vacate the order if the court considers that its continuation is not in the interests of justice having regard to the provisions of this law.

(5) In any case where subsection (4) applies, there shall be no right to inspect documents deposited with the Registrar until the court confirms the order under subsection (4)(c).

(6) The provisions of this section shall apply to the exclusion of any other rule of procedure or right of action existing under the laws of Samoa.”

---

**The International Companies Amendment Act 2009 is  
administered by the Samoa International Finance Authority.**