



SAMOA

SEGREGATED FUND INTERNATIONAL COMPANIES ACT 2000

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**SEGREGATED FUND INTERNATIONAL COMPANIES
ACT 2000**

2000

No. 6

AN ACT to provide for the registration and regulation of Segregated Fund International Companies as part of the regime of off shore banking in Samoa.

[Assent and commencement date: 6 July 2000]

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

**PART 1
PRELIMINARY**

1. Short title and commencement – (1) This Act may be cited as the Segregated Fund International Companies Act 2000.

(2) This Act comes into effect on the date it is assented to by the Head of State.

2. Interpretation – (1) In this Act, unless the context otherwise requires:

“articles” means articles of association of a segregated fund international company;

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

“charge” includes a mortgage and any agreement to give or execute a charge or mortgage whether upon demand or otherwise;

- “company” has the meaning ascribed to it in section 2 of the International Companies Act 1988;
- “court” means the Supreme Court of Samoa;
- “creditor” in relation to a segregated fund international company means any person capable of enforcing in Samoa any debt against that segregated fund international company or against the segregated assets attributable to a segregated fund of the segregated fund international company;
- “debt” means any debt, whether actual or contingent but excludes any tax liability, fine or penalty or any liability under any public law imposed by any government, governmental or semi-governmental authority of a country (other than Samoa) and any other debt or obligation incapable of being enforced in Samoa;
- “director” has the meaning ascribed to it in section 2 of the International Companies Act 1988;
- “domestic company” means a company incorporated under the Companies Act 2001;
- “insolvent” means unable to pay debts as they become due;
- “international company” means a company incorporated or continued in Samoa pursuant to the International Companies Act 1988;
- “international trust” means a trust registered under the International Trusts Act 1988;
- “legal obligation” means any contractual or other monetary obligation which the relevant segregated fund international company has incurred, but excludes any taxation, fine or penalty or any liability under any public law imposed by any foreign government and any other debt or obligation incapable of being enforced in Samoa;
- “liability” includes a debt or legal obligation;
- “memorandum” has the meaning ascribed to it in section 2 of the International Companies Act 1988;
- “Minister” means the Minister responsible for Finance;
- “non-segregated assets” of a segregated fund international company comprise the assets of the company which are not segregated assets;

- “officer” has the meaning ascribed to it under section 2 of the International Companies Act 1988;
- “other membership interest” means an interest of a person where that interest arises from or in connection with the fact that the person is a member of a segregated fund international company;
- “prescribed” means prescribed by or under this Act;
- “receiver” includes a receiver appointed by or on behalf of a secured creditor without the aid of the Court and includes a manager appointed by or on behalf of a secured creditor or by the Court;
- “receivership order” means an order of the Court under section 25 in relation to a segregated fund of a segregated fund international company;
- “registered segregated fund manager” means a person appointed as such under section 21;
- “Registrar” means the Registrar of International and Foreign Companies appointed under the International Companies Act 1988, and includes a Deputy Registrar;
- “regulations” means regulations made under this Act;
- “resident director” means an officer of a trustee company appointed to be such under section 20;
- “segregated assets” of a segregated fund international company means the assets of the company attributable to the company’s segregated funds under section 13;
- “segregated assets transfer order” means an order of the Court under section 22(10) sanctioning the transfer of the segregated assets attributable to any segregated fund of a segregated fund international company to another person;
- “segregated fund ” means a fund created by a segregated fund international company in the manner provided by this Act;
- “segregated fund capital” means the proceeds of the issue of shares or other membership interests in a segregated fund and includes segregated fund share capital;
- “segregated fund distribution” means a dividend or other payment or distribution of property liable to be

made in respect of 1 or more classes of segregated fund shares or other membership interests under the provisions of section 14;

“segregated fund dividend” means a dividend payable by a segregated fund international company in respect of segregated fund shares under the provisions of section 14;

“segregated fund international company” means a company incorporated as, or converted into, a segregated fund international company in accordance with the provisions of this Act;

“segregated fund shares” means shares created and issued by a segregated fund international company in respect of 1 of its segregated funds under the provisions of section 14, the proceeds of the issue of which (the “segregated fund share capital”) must be included in the segregated assets attributable to that segregated fund;

“segregated fund share capital” means the proceeds of the issue of segregated fund shares;

“transaction” means anything (including, without limitation, an agreement, arrangement, dealing, disposition, circumstance, event or relationship) whereby any liability arises or is imposed; and cognate expressions are construed accordingly;

“transfer” includes a form of disposition, alienation or conveyance and includes a declaration of trust;

“trustee company” has the meaning ascribed to it under section 2 of the International Companies Act 1988.

(2) Subject to subsection (1), expressions used in this Act (unless the context requires otherwise) have the same meanings as in the International Companies Act 1988.

(3) References in this Act to an enactment are references as re-enacted (with or without modification), amended, extended or applied.

(4) If the provisions of this Act are inconsistent with the provisions of any Act, other than the Constitution of Samoa, the provisions of this Act prevail.

3. Restriction on interest in segregated fund international company – (1) No natural person who is a citizen or

resident of or domiciled in Samoa and no company incorporated or registered in Samoa under the Companies Act 2001(NZ) (except a trustee company), may hold shares beneficially, or hold any other form of beneficial interest, either individually or with another person or persons, in a segregated fund international company or in a segregated fund of a segregated fund international company incorporated or registered under this Act.

(2) In this section, “non-resident” and “resident” have the same meaning as in the International Banking Act 2005.

4. Application of Act – Unless the context otherwise requires, no provision of this Act applies to a domestic company.

5. Application of International Companies Act 1988 – The International Companies Act 1988, subject to this Act, applies to a segregated fund international company registered under this Act.

PART 2
CONSTITUTION AND ADMINISTRATION OF
SEGREGATED FUND INTERNATIONAL COMPANIES

6. Incorporation or registration of segregated fund international company – (1) A trustee company may apply to incorporate or register a company as a segregated fund international company or to convert an existing international company, if so authorised by its memorandum, into a segregated fund international company in accordance with the provisions of this Act.

(2) A segregated fund international company incorporated or registered or converted under this Act is a company limited by shares, a company limited by guarantee or a company limited by both shares and guarantee.

(3) No segregated fund international company may issue bearer shares or share warrants to bearer and all shares issued by a segregated fund international company must be registered shares.

(4) The memorandum of a company for which application has been made to incorporate or register the company as a

segregated fund international company or to convert the company into a segregated fund international company shall comply with section 8.

(5) An application for incorporation or registration as a segregated fund international company must be accompanied by:

- (a) the documentation required to be lodged under section 14(1) of the International Companies Act 1988;
- (b) a certificate by the trustee company lodging the application, stating that to the best of the trustee company's knowledge, all of the requirements of this Act have been complied with; and
- (c) the prescribed registration fee.

(6) An application for registration as a segregated fund international company may also be made under subsection (1) at the same time that an application is made to register a company by way of continuance under section 16 of the International Companies Act 1988.

(7) The Registrar, if satisfied that the company complies with the provisions of this Act, shall register the company as a segregated fund international company and issue a certificate of incorporation, or certificate of registration, if registration is made by way of continuance under section 16 of the International Companies Act 1988 or by conversion of an international company, under the Registrar's hand and seal.

(8) The certificate of incorporation or registration as the case may be, is conclusive evidence that all the requirements of this Act in respect of incorporation and of matters precedent and incidental thereto have been complied with, and that the company referred therein was duly incorporated and registered under this Act.

7. Name of segregated fund international company –

The name of a segregated fund international company shall, without prejudice to section 22 of the International Companies Act 1988, include the expression "Segregated Fund", "SF", "SFC" or any cognate expression approved in writing by the Registrar.

8. Memorandum of segregated fund international company – (1) In addition to the matters required under the International Companies Act 1988, the memorandum of a segregated fund international company shall state:

- (a) that it is a segregated fund international company;
- (b) that each segregated fund that is created will bear its own distinctive name or designation; and
- (c) the name of the trustee company that is to be the first registered segregated fund manager of the company.

(2) An international company may, in order to comply with subsection (1), alter its memorandum by special resolution.

9. Legal status of segregated fund international company – (1) Even if a segregated fund international company may have created 1 or more funds under this Act, a segregated fund international company is a single legal person.

(2) A segregated fund created by a segregated fund international company is not a legal person separate from that company.

10. Creation of segregated funds – (1) Subject to the provisions of this Act, a segregated fund international company may create 1 or more segregated funds.

(2) A segregated fund international company may only create segregated funds through a registered segregated fund manager appointed under section 21.

(3) Each segregated fund created by a segregated fund international company shall have its own distinct name or designation.

(4) The registered segregated fund manager shall apply to the Registrar for registration of each fund created by a segregated fund international company. An application for registration of a segregated fund shall specify the name or designation of the segregated fund and such other information as may be prescribed by regulation. An application under this subsection must be accompanied by the prescribed registration fee.

(5) Upon filing of an application under subsection (4), the Registrar shall issue a certificate of registration under the Registrar's hand and seal which is conclusive evidence that the

requirement of this Act in respect of registration of a segregated fund has been complied with and that the segregated fund referred to therein has been duly registered under this Act.

(6) No segregated fund created by a segregated fund international company is valid until registered by the Registrar under this section.

(7) The creation of a segregated fund does not of itself create a trust and, subject to any contract, declaration of trust or other obligation to the contrary, a segregated fund international company remains the legal and beneficial owner of the assets attributable to the segregated fund.

11. Renewal of registration – (1) A segregated fund international company is liable to pay to the Registrar on 30 November in each year following the year in which it is incorporated or registered, the prescribed annual renewal fee.

(2) A segregated fund international company is liable to pay to the Registrar on 30 November in each year following the year in which each segregated fund was registered, the prescribed annual renewal fee for each segregated fund registered by the segregated fund international company.

(3) If a segregated fund international company fails to renew its registration within the prescribed period, section 197 of the International Companies Act 1988 applies.

12. Revocation of registration and consequences – (1)

The Registrar shall revoke the registration of a segregated fund where the segregated fund international company which created the segregated fund has failed to renew its registration and that company has been dissolved under section 197 of the International Companies Act 1988.

(2) If:

- (a) the registration of a segregated fund has not been renewed by the segregated fund international company as required by section 11(2); and
- (b) the segregated fund manager has not filed notice of dissolution of that segregated fund under section 22(14), –

the Registrar shall send by registered post addressed to the segregated fund international company at its registered office in Samoa a notice to that effect and stating that if the breach of

section 11(2) is not rectified or notice of dissolution under section 22(14) is not filed within 2 months from the date thereof the Registrar shall revoke the registration of the segregated fund.

(3) If the Registrar has reasonable cause to believe that:

- (a) a segregated fund international company does not have a resident director as required by section 20; or
- (b) a segregated fund international company does not have a registered fund manager as required by section 21,

the Registrar may send by registered post addressed to the segregated fund international company at its registered office in Samoa a notice to that effect and stating that if the breach of section 20 or 21 is not rectified within 2 months from the date thereof the Registrar will revoke the registration of each segregated fund created by that segregated fund international company.

(4) At the expiration of the time specified in the notice sent to a segregated fund international company under subsection (2) or (3), or such further time as the Registrar deems fit, the Registrar may, unless cause to the contrary has been previously shown, revoke the registration of each segregated fund created by that segregated fund international company.

(5) If registration of a segregated fund:

- (a) is revoked under subsection (1); or
- (b) has been revoked under subsection (4) and the segregated fund international company that created that segregated fund has been dissolved subsequent to such revocation, –

and there remains any property, real or personal, including those in action, and whether inside or outside Samoa, which formed part of the segregated assets of that segregated fund and which has not been disposed of or otherwise dealt with prior to revocation of registration or dissolution of the segregated fund international company, such property, despite any enactment or rule of law to the contrary and by the operation of this section, shall be and become vested in the Registrar for all the estate and interest therein, legal or equitable, of the segregated fund international company or its liquidator at the date the segregated fund international company was dissolved, together with all

claims, rights and remedies which the segregated fund international company or its liquidator then had in respect thereof.

(6) Despite any enactment or rule of law to the contrary and subject to subsection (5), if:

(a) the registration of a segregated fund has been revoked under subsection (4); and

(b) a receiver has not been appointed under a receivership order made under Part 3, –

any property, real or personal, including choses in action, and whether inside or outside Samoa, which formed part of the segregated assets of that segregated fund and which has not been disposed of or otherwise dealt with by the segregated fund manager within 6 months after the date of revocation of registration, shall by operation of this section, be and become vested in the segregated fund international company on that date being 6 months after the date of revocation of registration.

(6A) Any segregated assets of a segregated fund so vested under subsection (6) in the segregated fund international company shall be held by the segregated fund international company in trust for a further period of 2 years to satisfy the valid claims of creditors and members against such segregated assets.

(6B) Upon the expiry of the 2 year period under subsection (6A), any remaining segregated assets which have not been so distributed and are not subject to any valid claim by the creditors or members of the deregistered segregated fund shall vest absolutely in the segregated fund international company.

(7) The Registrar may sell or otherwise dispose of or deal with property vested in the Registrar under subsection (5) either solely or in concurrence with any other person who may have an interest in the same in such manner, for such consideration and upon such terms and conditions as the Registrar thinks fit with power to rescind any contract and resell or otherwise dispose of or deal with such contracts, instruments and documents as the Registrar thinks necessary.

(8) The moneys received by the Registrar in the exercise of any of the powers conferred on the Registrar by this section shall be applied first in defraying all costs, expenses, fees and commissions incidental thereto and thereafter shall be dealt with under the Public Finance Management Act 2001.

(9) An action for or in respect of any moneys paid under subsection (8) shall be against the Registrar as the nominal defendant and shall be instituted within 2 years next after the date of revocation of registration of the segregated fund after which time no such action shall be instituted and the claim is absolutely barred.

13. Assets of segregated fund international company –

(1) The assets of a segregated fund international company shall be divided into segregated assets and non-segregated assets.

(2) The segregated assets of a segregated fund international company comprise the assets of the company attributable to the segregated funds of the company.

(3) The assets attributable to each segregated fund of a segregated fund international company comprise:

- (a) assets represented by the proceeds of the issue under section 14 of segregated fund capital and reserves attributable to that segregated fund; and
- (b) all other assets attributable to that segregated fund.

(4) The directors of a segregated fund international company shall:

- (a) keep segregated assets separate and separately identifiable from non-segregated assets; and
- (b) keep segregated assets attributable to each segregated fund separate and separately identifiable from segregated assets attributable to other segregated funds.

(5) In subsection (3), “reserves” includes retained earnings, capital reserves and share premiums.

(6) The non-segregated assets of a segregated fund international company comprise the assets of the company which are not segregated assets.

(7) Income, receipts and other property or rights of or acquired by a segregated fund international company not otherwise attributable to any segregated fund must be applied to and comprised in the company’s non-segregated assets.

14. Share and membership capital of segregated fund international company –

(1) A segregated fund international company may allocate part or all of its registered share capital to any of its segregated funds and may, in respect of any of such

segregated funds, create and issue shares or other membership interests.

(1A) The segregated fund shares issued under subsection (1) for each segregated fund constitutes a separate class of shares.

(1B) The proceeds of the issue of such segregated fund shares shall be included in the segregated assets attributable to the segregated fund in respect of which the segregated fund shares were issued.

(1C) The proceeds of the issue of other membership interests shall be included in the capital of the segregated fund in respect of which they were issued or, if there be no such fund, the proceeds shall be treated as non-segregated assets of the company.

(2) The proceeds of the issue of shares other than segregated fund shares created and issued by a segregated fund international company shall be comprised in the company's non-segregated assets.

(3) A segregated fund international company may pay a dividend or other payment in respect of 1 or more classes of segregated fund shares or other membership interests.

(4) Segregated fund distributions may be paid in respect of segregated funds shares or other membership interests by reference only to the profits attributable to the segregated fund in respect of which the segregated fund shares or other membership interests were issued or in respect of the segregated assets and liabilities attributable to the segregated fund in respect of which the segregated fund shares or other membership interests were issued, and may include capital distributions, dividends and bonus shares.

(5) Unless the context requires otherwise, references in the International Companies Act 1988 to shares include references to segregated fund shares.

(6) For the avoidance of doubt, nothing in this section prevents a payment to a person who is not a member of a segregated fund where that payment arises out of a legal obligation in respect of that segregated fund.

15. Limitation of liabilities of segregated fund international company – (1) Where a liability of a segregated fund international company to a creditor of that segregated fund

international company arises from a transaction, or is otherwise imposed by this Act, in respect of a particular segregated fund:

- (a) that liability of the company extends only to, and that creditor shall, in respect of that liability, be entitled to have recourse only to, the segregated assets attributable to that segregated fund; and
- (b) that liability of the company shall not extend to, and that creditor shall not, in respect of that liability, be entitled to have recourse to, the segregated assets attributable to any other segregated fund.

(2) If a liability of a segregated fund international company to a creditor:

- (a) arises otherwise than from a transaction in respect of a particular segregated fund; or
- (b) is imposed by this Act otherwise than in respect of a particular segregated fund, –

that liability of the company shall extend only to, and that creditor is, in respect of that liability, entitled to have recourse only to, the company's non-segregated assets.

(3) Liabilities of a segregated fund international company not otherwise attributable to any of its segregated funds must be discharged from the company's non-segregated assets.

(4) Nothing in this section grants to any person security over any assets or to affect that priority of any security granted to any secured creditor of a segregated fund or of a segregated fund international company.

16. Creditors of segregated fund international company

– (1) For the purposes of section 15, a transaction is taken to be in respect to a particular segregated fund if the segregated fund international company has identified or specified that the transaction is in relation to that segregated fund, or if the creditor has actual or constructive notice that the segregated fund international company has entered into the transaction or agreement on behalf of that segregated fund.

(2) Segregated assets attributable to a segregated fund of a segregated fund international company:

- (a) shall only be available to the creditors of the company who are creditors in respect of that segregated fund and who shall thereby be entitled, in conformity with the provisions of this

Act, to have recourse to the segregated assets attributable to that segregated fund; and

- (b) shall be absolutely protected from the creditors of the company who are not creditors in respect of that segregated fund and who accordingly shall not be entitled to have recourse to the segregated assets attributable to that segregated fund.

17. Company to inform persons they are dealing with segregated fund international company – (1) A segregated fund international company shall:

- (a) inform any person with whom it transacts where such transaction creates any liability against the segregated fund international company, that it is a segregated fund international company; and
- (b) for the purposes of that transaction, identify or specify the segregated fund in respect of which that person is transacting, unless that transaction is not a transaction in respect of a particular segregated fund.

(2) If, in contravention of subsection (1), a segregated fund international company:

- (a) fails to inform a person that he or she is transacting with a segregated fund international company, and that person is otherwise unaware that, and has no reasonable grounds to believe that, he or she is transacting with a segregated fund international company; or
- (b) fails to identify or specify the segregated fund in respect of which a person is transacting, and that person is otherwise unaware of, and has no reasonable basis of knowing, which segregated fund he or she is transacting with, –

then, in either such case—

- (i) the directors shall (despite any provision to the contrary in the company's articles or in any contract with the company or otherwise) incur personal liability to that person in respect of the transaction; and
- (ii) the directors shall have a right of indemnity against the non-segregated assets of the

company, unless they were fraudulent, reckless or negligent, or acted in bad faith.

(3) Despite subsection (2)(i), the Court may relieve a director of all or part of his or her personal liability thereunder if the director satisfies the Court that he or she ought fairly to be so relieved because:

- (a) the director was not aware of the circumstances giving rise to his or her liability and, in being not so aware, the director was neither fraudulent, reckless or negligent, nor acted in bad faith; or
- (b) the director expressly objected, and exercised such rights as he or she had as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his or her liability.

(4) If, under subsection (3), the Court relieves a director of all or part of his or her personal liability under subsection (2)(i), the Court may order that the liability in question shall instead be met from such of the segregated or non-segregated assets of the segregated fund international company as may be specified in the order.

(5) A provision in the articles of a segregated fund international company, and any other contractual provision under which the segregated fund international company may be liable, which purports to indemnify directors in respect of conduct which would otherwise invalidate an indemnity against non-segregated assets by virtue of subsection (2)(ii), is void.

(6) This section is without prejudice to section 89A of the International Companies Act 1988.

18. Registration of charges over assets of segregated fund international company – (1) A person who has an interest in a charge created by a segregated fund international company may apply for registration of the charge under the provisions of Division 4 of Part 4 of the International Companies Act 1988.

(1A) The application for registration of a charge against the assets of a segregated fund international company shall specify whether the assets are non-segregated assets or segregated assets and if against segregated assets shall state the name of the

registered segregated fund to which such segregated assets are attributed.

(2) A charge created against the segregated assets of a registered segregated fund of a segregated fund international company is registered as a separate and separately identifiable charge against the registered segregated fund and not against the other segregated and non-segregated assets of the segregated fund international company.

(3) The provisions of Division 4 of Part 4 of the International Companies Act 1988 when applied to a segregated fund international company must be interpreted and applied separately to distinguish between segregated and non-segregated assets of a segregated fund international company.

19. Prohibited activities of segregated fund international company– A segregated fund international company shall not carry on the business of banking, insurance or acting as a trustee company unless it is licensed or otherwise permitted to do so under the laws currently in force in Samoa. Section 7(2) of the International Companies Act 1988 applies to a segregated fund international company.

20. Resident director – A segregated fund international company shall appoint and maintain at all times a resident director who is an officer of a registered segregated fund manager. A corporation shall not be the sole resident director of a segregated fund international company.

21. Registered segregated fund manager–(1) A segregated fund international company shall appoint and maintain at all times a registered segregated fund manager in Samoa who is a trustee company registered under the Trustee Companies Act 1988.

- (2) The registered segregated fund manager shall:
- (a) ensure segregated funds are created and registered in accordance with this Act;
 - (b) ensure that segregated funds are administered in compliance with this Act;
 - (c) keep records and accounts which shall identify shares or membership interests of shareholders

or other members in respect of each segregated fund; and

- (d) keep records and accounts which shall identify all creditors, liabilities and assets of each segregated fund.

(3) A contract under which a segregated fund manager is appointed is taken to include a covenant imposing upon the segregated fund manager the duty to pay from the assets of the segregated fund all fees or fines required or prescribed for registration of that segregated fund and authorising that segregated fund manager to have recourse to the assets of that segregated fund for the purpose of ensuring that such fees or fines for registration are paid.

(4) If the segregated fund manager pays any fees or fines under subsection (3) for registration out of its own funds it shall have a corresponding lien on any asset of the segregated fund under its management.

22. Transfers or distributions of segregated assets from segregated fund international company – (1) Except as hereunder provided, no transfer or distribution of segregated assets attributable to a segregated fund of a segregated fund international company must be made, otherwise than in the course of business or for adequate consideration or pursuant to a legal obligation, unless the segregated fund manager of that segregated fund is satisfied on reasonable grounds that the provisions of the Articles, if any, requiring member approval of the proposed transfer or distribution have been complied with, and that either:

- (a) all creditors of that segregated fund have had at least 30 days' notice of the proposed transfer or distribution and no such creditor has objected to the proposed transfer or distribution; or
- (b) that the segregated fund will, immediately after the making of the transfer or distribution, satisfy the solvency test prescribed under subsection (15) in relation to that segregated fund.

(2) For the purposes of subsection (1), notice of a proposed transfer or distribution may be given to the relevant creditors in respect of a segregated fund in the same manner as provided for a general meeting of members of the segregated fund

international company and a notice of objection to the proposed transfer or distribution must be lodged at the registered office of the segregated fund manager no later than 30 days after notice of the proposed transfer or distribution was first given to the objecting creditor.

(2A) Any remaining period of notice required for objections to be lodged under this section may be waived by unanimous consent in writing of creditors entitled to notice of the proposed transfer or distribution after they have received actual notice of the proposed transfer or distribution.

(3) Before a transfer or distribution is made under subsection (1)(b), the segregated fund manager must sign a certificate stating that, in its opinion, the company will, immediately after the transfer is made, satisfy the solvency test in relation to that segregated fund and the grounds for that opinion.

(4) If, before the transfer or distribution is made, the segregated fund manager ceases to be satisfied on reasonable grounds that the company will, immediately after the transfer is made, satisfy the solvency test in relation to that segregated fund, a transfer made by the company is deemed not to have been authorised.

(5) A segregated fund manager who fails to comply with subsection (3) commits an offence and is liable to the penalty set out in section 30.

(6) Despite subsections (1) to (5) and in the alternative to those subsections, the directors or the registered segregated fund manager of a segregated fund international company, or any other interested party may apply to the Registrar for approval to transfer or distribute segregated assets attributable to any segregated fund of a segregated fund international company to another person, wherever resident or incorporated outside Samoa, (including an international company) and whether or not a segregated fund international company. Such application shall be in the prescribed form and shall:

- (a) specify whether a majority by value of the creditors of the company who are entitled to recourse against the segregated assets attributable to the segregated fund have not objected to the transfer or distribution; and

(b) if any creditors have objected to the proposed transfer or distribution, the reasons why the transfer or distribution would not unfairly prejudice the rights and interests of those creditors; and

(c) include such documentation as may be required to evidence paragraphs (a) and (b).

(7) An application under subsection (6) must be accompanied by the prescribed application fee.

(8) Upon receipt of an application under subsection (6), the Registrar may:

(a) approve a transfer or distribution of segregated assets attributable to a segregated fund of a segregated fund international company if the Registrar is satisfied—

(i) that the creditors of the company entitled to have recourse to the segregated assets attributable to the segregated fund have consented to the transfer or distribution; or

(ii) that those creditors would not be unfairly prejudiced by the transfer or distribution;

(iii) that the company will, immediately after the making of the transfer or distribution, satisfy the solvency test in relation to that segregated fund;

(b) if the Registrar is not so satisfied, the Registrar may—

(i) decline the application; or

(ii) determine that the application should be heard by the Court in accordance with subsection (9).

(9) If the Registrar has declined an application under subsection (8) or has determined that the application should be heard by the Court under subsection (8)(b)(ii) or if the applicant is otherwise not satisfied with the decision of the Registrar under that subsection, the segregated fund manager or the directors of a segregated fund international company may apply to the Court for an order approving the transfer or distribution (“segregated assets transfer order”).

(10) The Court may, on hearing an application for a segregated assets transfer order:

- (a) make or decline to make a segregated assets transfer order; or
- (b) make an interim order or adjourn the hearing, conditionally or unconditionally;
- (c) dispense with any of the requirements of subsection (1), (6) or (8)(a).

(11) The Court may attach such conditions as it thinks fit to a segregated assets transfer order, including conditions as to the discharging of claims of creditors entitled to have recourse to the segregated assets attributable to the segregated fund in relation to which the order is sought or the holding of reserves against contingent liabilities.

(12) The Court may make a segregated assets transfer order in relation to a segregated fund of a segregated fund international company despite that:

- (a) a liquidator has been appointed to act in respect of the company or the company has passed a resolution for voluntary winding up;
- (b) a receivership order has been made in respect of the segregated fund or any other segregated fund of the company.

(13) This section is without prejudice to a power of a segregated fund international company lawfully to make payments from the segregated assets attributable to a segregated fund of the company to a person entitled, in conformity with the provisions of this Act, to have recourse to those segregated assets.

(14) If a transfer or distribution of segregated assets attributable to a segregated fund of a segregated fund international company made pursuant to this section results in the dissolution of the segregated fund, the registered segregated fund manager shall file with the Registrar a notice of dissolution in the prescribed form.

(15A) For the purposes of this Act, a company satisfies the solvency test in relation to a segregated fund if:

- (a) the company is able to pay, in accordance with this Act, all the debts attributable to that segregated fund as they become due in the normal course of business; and
- (b) the value of the assets attributable to that segregated fund is greater than the value of the liabilities

attributable to that segregated fund including contingent liabilities.

(15B) In determining for the purposes of this Act whether the value of the assets attributable to a segregated fund is greater than the value of the liabilities attributable to that segregated fund including contingent liabilities, the segregated fund manager:

- (a) must have regard to—
 - (i) the most recent financial statements of the company that comply with the International Companies Act 1988; and
 - (ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and the value of the company's liabilities, including its contingent liabilities; and
- (b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

(16) In determining, for the purposes of this section, the value of a contingent liability, account may be taken of:

- (a) the likelihood of the contingency occurring; and
- (b) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

(17) If a transfer or distribution is made in contravention of the requirements of this section, that transfer or distribution is not void but voidable within 2 years of the date of the contravening transfer or distribution at the instance of any member or creditor of the relevant segregated fund but not so as to prejudice the rights of any party to a transaction who has acted without notice of any defect.

(18) Nothing in this section limits the operation of any trust or to authorise any transfer or distribution of assets which would constitute a breach of trust.

(19) Nothing in this section authorises the non-compliance by a segregated fund international company with any legal obligation attaching to the company in respect of the assets or business or undertakings or liabilities of a segregated fund.

23. Provisions in relation to liquidation of segregated fund international company – (1) Despite any statutory provision or rule of law to the contrary, in the liquidation of a segregated fund international company, the liquidator:

- (a) shall be bound to deal with the company's assets under the requirements set out in section 13(4)(a) and (b); and
- (b) in discharge of the claims of creditors of the segregated fund international company, shall apply the company's assets to those entitled to have recourse thereto in conformity with the provisions of this Act.

(2) Section 154 of the International Companies Act 1988 (which provides that a company's assets in a winding up shall be realised and applied in satisfaction of the company's liabilities and debts equally) does not apply to the liquidation of a segregated fund international company, and the provisions of subsection (3) of this section apply in lieu thereof in respect of the liquidation of a segregated fund international company.

(3) The property of a segregated fund international company shall, on its winding up, be applied as follows:

- (a) the segregated assets attributable to each of the segregated funds of the segregated fund international company shall be applied firstly in satisfaction of the liabilities to the creditors of the company entitled to have recourse to those segregated assets attributable to the relevant segregated fund. The segregated assets of each separate segregated fund shall only be applied to satisfy the liabilities attributable to that segregated fund and not to satisfy the liabilities to creditors of any other segregated fund;
- (b) the surplus segregated assets, if any, attributable to each segregated fund after satisfaction of the liabilities to creditors of the company under paragraph (a) shall be distributed in accordance with the Articles to the holders of the segregated fund shares attributable to the relevant segregated fund or to such other persons who hold the membership interest in such segregated fund. The surplus segregated assets of each

separate segregated fund shall only be distributed to the holders of the segregated fund shares or other membership interests in that segregated fund and shall not be distributed to the holders of the segregated fund shares or other membership interest in any other segregated fund;

- (c) the non-segregated assets of the segregated fund international company must be applied in satisfaction of all of its remaining liabilities equally and subject to that application shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

PART 3 RECEIVERS

24. Receivers generally – (1) In carrying out his or her duties, a receiver is bound by section 15.

(2) Despite any provision to the contrary in any debenture or other instrument pursuant to which a receiver is appointed, a segregated fund international company may only grant a charge over the segregated assets and undertakings held by the company for the segregated fund specified in the debenture or other instrument. A charge over the segregated assets of a segregated fund may only be granted in relation to the liabilities, assets and activities of that segregated fund.

(3) If a receiver is appointed over the non-segregated assets of a segregated fund international company the powers, duties and responsibilities of that receiver shall, unless a further receivership order or appointment or receivership orders or appointments is or are made, only apply to the non-segregated assets of the segregated fund international company and not to any segregated assets or to the business or undertakings of any segregated fund.

(4) If a receiver is appointed over the segregated assets of a segregated fund of a segregated fund international company, the powers, duties and responsibilities of that receiver under the International Companies Act 1988 apply only to the assets or business or undertakings or liabilities of that segregated fund and not to any segregated assets or business or undertakings or

liabilities of any other segregated fund nor to the non-segregated assets or business or undertakings or liabilities of the segregated fund international company.

25. Receivership orders in relation to segregated funds—

(1) Subject to the provisions of this section, if in relation to a segregated fund international company the Court is satisfied:

- (a) that the segregated assets attributable to a particular segregated fund of the company (when account is taken of the company's non-segregated assets, unless there are no creditors in respect of that segregated fund entitled to have recourse to the company's non-segregated assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that segregated fund;
- (b) that the making of an order under this section would achieve the purposes set out in subsection (3); or
- (c) that registration of the particular segregated fund has been revoked, under section 12, no more than 6 months prior to the date of the application,

—
the Court may make an order under this section (a “receivership order”) in respect of that segregated fund.

(2) A receivership order may be made in respect of 1 or more segregate funds provided that that if the order is made in respect of more than 1 segregated fund, the Court must be satisfied that subsection (1) applies to each segregated fund in relation to which an order is made.

(3) A receivership order is an order directing that the business and segregated assets of or attributable to a segregated fund (and no other assets) shall be managed by the receiver specified in the order for the purposes of:

- (a) the orderly winding up of the business of or attributable to the segregated fund; and
- (b) the distribution of the segregated assets attributable to the segregated fund to those entitled to have recourse thereto.

(4) A receivership order:

- (a) may not be made if—

- (i) a liquidator has been appointed to act in respect of the segregated fund international company; or
 - (ii) the segregated fund international company has passed a resolution for voluntary winding up; and
- (b) shall cease to be of effect upon the appointment of a liquidator to act in respect of the segregated fund international company, but without prejudice to prior acts.

(5) No resolution for the voluntary winding up of a segregated fund international company and segregated fund of which is subject to a receivership order is effective without leave of the Court.

26. Applications for receivership orders– (1) An application for a receivership order in respect of a segregated fund of a segregated fund international company may be made by:

- (a) the company; or
 - (b) the directors of the company; or
 - (c) any creditor of the company in respect of that segregated fund; or
 - (d) any holder of segregated fund shares or other membership interests in respect of that segregated fund; or
 - (e) the registered segregated fund manager of that segregated fund; or
 - (f) the Registrar.
- (2) The Court may, on hearing:
- (a) an application for a receivership order; or
 - (b) an application for leave, under section 25(5), for a resolution for voluntary winding-up,–

make an interim order or adjourn the hearing, conditionally or unconditionally.

(3) Notice of an application to the Court for a receivership order in respect of a segregated fund of a segregated fund international company shall be served upon:

- (a) the company; and
- (b) the registered segregated fund manager of the segregated fund; and

- (c) the Registrar; and
- (d) such other persons (if any) as the Court may direct,—

who shall each be given an opportunity of making representations to the Court before the order is made.

27. Functions of receiver and effect of receivership order – (1) The receiver of a segregated fund appointed pursuant to an order of the Court:

- (a) may do all such things as may be necessary for the purposes set out in section 25(3); and
- (b) has all the functions and powers of the registered segregated fund manager and the directors in respect of the business and segregated assets of or attributable to the segregated fund.

(2) The receiver may at any time apply to Court:

- (a) for directions as to the extent or exercise of any function or power;
- (b) for the receivership order to be discharged or varied; or
- (c) for an order as to any matter arising in the course of his or her receivership.

(3) In exercising his or her functions and powers, the receiver is taken to act as the agent of the segregated fund international company, and shall not incur personal liability except to the extent that he or she is fraudulent, reckless or grossly negligent, or acts in bad faith.

(4) A person dealing with the receiver in good faith is not concerned to enquire whether the receiver is acting within his or her powers.

(5) When an application has been made for, and during the period of operation of, a receivership order:

- (a) no proceedings may be instituted or continued by or against the segregated fund international company in relation to the segregated fund in respect of which the receivership order was made; and
- (b) no steps may be taken to enforce any security or in execution of legal process in respect of the business or segregated assets of or attributable to

the segregated fund in respect of which the receivership order was made, –
except by leave of the Court, which may be conditional or unconditional.

(6) During the period of operation of a receivership order, the functions and powers of the directors shall cease in respect of the business and segregated assets of or attributable to the segregated fund in respect of which the order was made.

28. Discharge and variation of receivership orders–(1)

The Court shall not discharge a receivership order unless it appears to the Court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

(2) The Court, on hearing an application for the discharge or variation of a receivership order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

(3) Upon the Court discharging a receivership order in respect of a segregated fund of a segregated fund international company on the ground that the purpose for which the order was made has been achieved or substantially achieved, the Court may direct that a payment made by the receiver to a creditor of the company in respect of that segregated fund is deemed full satisfaction of the liabilities of the company to that creditor in respect of that segregated fund; and the creditor's claims against the company in respect of that segregated fund are deemed extinguished.

(4) Nothing in subsection (3) operates so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the segregated fund international company.

29. Remuneration of receiver – The remuneration of a receiver appointed by order of the Court and any expenses properly incurred by the receiver shall be payable, in priority to all other claims, from:

- (a) the segregated assets attributable to the segregated fund in respect of which the receiver was appointed; and

- (b) to the extent that these may be insufficient, the non-segregated assets of the segregated fund international company.

**PART 4
MISCELLANEOUS**

30. Offences – (1) A person who knowingly and wilfully:

- (a) does or authorises anything which by or under this Act he or she is forbidden to do; or
- (b) does not do or refuses to do something which by or under this Act he or she is required or directed to do; or
- (c) otherwise contravenes or fails to comply with any provision of this Act, –

commits an offence and, save as hereinafter provided in this section, is liable on conviction to a fine not exceeding 5 penalty units and for a second or subsequent offence to a fine not exceeding 10 penalty units.

(2) A person who commits an offence against the provisions, or any part of the provisions, of any 1 of section 13 or 22 is liable on conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 3 months or both in respect of each such offence and for each second or subsequent offence to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 6 months or to both.

31. Regulations – The Head of State, acting on the advice of Cabinet, may make regulations prescribing all matters and things required or authorised by this Act to be prescribed or provided or which the necessary or convenient to be prescribed or provided, for the carrying out of, or the giving full effect to, the provisions of this Act and its due administration, including all or any of the following particular purposes:

- (a) the conduct of the business of segregated fund international companies;
- (b) the manner in which segregated fund international companies may carry on, or hold themselves out as carrying on, business;
- (c) the winding up or receivership of segregated fund international companies;

- (d) prescribing forms to be used for the purposes of this Act and the matters to be specified in such forms;
- (e) prescribing forms of applications and other notices under this Act;
- (f) fixing fees and charges to be paid under this Act and the penalties for breaches thereunder, or delegating the power of fixing such fees, charges and penalties to prescribed persons or bodies.

32. Immunity – No action shall lie against the Government or any statutory body or authority of Samoa, the Minister, the Authority, the Registrar or any person acting pursuant to any authority conferred by the Minister, 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 any regulations made thereunder.

33. Privacy – Section 227 of the International Companies Act 1988 applies to a segregated fund international company and to a segregated fund of a segregated fund international company.

34. Fees – (1) In addition to any other fee provided for under this Act the regulations may provide for a fee or charge or penalty to be fixed for every application, receipt, decision, consent, approval, transfer, copy, filing, lodgement, replacement, penalty or for any other act or activity performed by the Minister or Registrar under the provisions of the Act.

(2) All fees, charges and penalties fixed under the Act may be in denomination Samoan tala (ST\$) or any other currency.

REVISION NOTES 2008– 2015

This is the official version of this Act as at 31 December 2015.

This Act has been revised by the Legislative Drafting Division from 2008 to 2015 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a”
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - (iii) “shall have” changed to “has”
 - (iv) “shall be guilty” changed to “commits”
 - (v) “notwithstanding” changed to “despite”
 - (vi) “pursuant to” changed to “under”
 - (vii) “it shall be lawful” changed to “may”
 - (viii) “it shall be the duty” changed to “shall”
 - (ix) Numbers in words changed to figures
 - (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed
 - (xi) “under the hand of” changed to “signed by”
 - (xii) “in the case of” changed to “of”.
 - (xiii) “in accordance with” changed to “under”
 - (xiv) Part numbering changed to decimal & Part 4 re-titled as ‘MISCELLANEOUS’

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.



Tuatagaloa Aumua Ming Leung Wai
Attorney General of Samoa

*This Act
is administered by
the Central Bank of Samoa.*
