



SAMOA

SPECIAL PURPOSE INTERNATIONAL COMPANIES ACT 2012

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**SPECIAL PURPOSE INTERNATIONAL COMPANIES ACT
2012**

2012,

No. 8

AN ACT to provide for the incorporation, registration and administration of Special Purpose International Companies; and for related purposes.

*[Assent date: 13th March 2012]
[Commencement date: 9 June 2014]*

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 Special Purpose International Companies Act 2012.

(2) This Act commences on a date to be nominated by the Minister. [*Samoa Observer 27/6/14*]

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

“articles” in relation to a company, means the articles of association of that company for the time being in force;

“Assistant Registrar” means an Assistant Registrar of a Special Purpose International Companies appointed under section 8(1)(b);

“audit period” means the period in respect of which any profit and loss account of a Special Purpose International Company is made up;

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

“board of directors” means the board of directors of a Special Purpose International Company;

“book” includes accounts, deeds, writings, invoices, records and documents;

“capital surplus” means the surplus of a Special Purpose International Company other than its earned surplus;

“certified” means certified in the prescribed manner to be a particular document or to be a true copy thereof;

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

“charity” means any institution whether corporate or not and including the trustees of a trust (as such) which exists exclusively for the fulfilment of charitable purposes; and
“charitable purposes” means engaging, in any part of the World (and for the avoidance of doubt including in Samoa), in the relief of poverty, the advancement of education, the advancement of religion, or in any other purpose beneficial to any community not falling under any of the preceding heads;

“company” means a body corporate formed and incorporated under this Act;

- “contribution” means the total amount of capital received for the time being by a company by way of gifts or donations to, or endowment of, it for its purposes;
- “Court” means Supreme Court of Samoa;
- “creditor” means any person capable of enforcing any debt (whether contingent or actual) against the company in Samoa (excluding for the avoidance of doubt, any taxation, fine or penalty imposed by any government or governmental or semi-governmental authority of a government other than of Samoa);
- “debt” means any actual or contingent debt, but excludes any taxation, fine or penalty or any liability under any public law by any foreign government and any other debt or obligation incapable of being enforced in Samoa;
- “Deputy Registrar” means the person appointed as such under section 8(1)(b);
- “director” means any person occupying the position of director of a company and any person held out by a company to be a director;
- “document” includes summons, order and other legal process and notice and register;
- “earned surplus” means at any point of time that portion of the surplus of a company equal to the balance of its income plus gains less expense plus losses from the date of incorporation or from the latest date when a distribution was made out of earned surplus and includes also any portion of surplus allocated to earned surplus from disposals, mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or property or assets of another body corporate, whether incorporated in Samoa or not;
- “expert” includes engineer, value, accountant, auditor and any other person, whose profession or reputation gives authority to a statement made by him or her;
- “foreign government” means any government, governmental authority or agency, or any semi-governmental authority or agency, other than of Samoa;
- “Founder’s Rights Certificate” means a certificate issued by a company under section 16;
- “insolvent” means unable to pay debts as they become due;
- “memorandum” in relation to a company, means the memorandum of association of that company for the time being in force;
- “Minister” means the Minister of Finance;

- “month” means calendar month and “Day” means calendar day;
- “officer” in relation to a company, includes:
- (a) any director secretary or employee of the company;
 - (b) a receiver and manager of any part of the undertaking of the company appointed under the power contained in any instrument; and
 - (c) any liquidator of a company appointed in a voluntary winding-up, but does not include a liquidator appointed in a compulsory winding-up.
- “person” includes a natural person, a corporation sole, a company, a partnership, a statutory body or office, an instrumentality of government, any other public authority, any court or tribunal and any other body of persons whether corporate or incorporate;
- “post” includes communications by mail, courier, freight, telex or facsimile;
- “print” includes a typewritten and any duplication thereof not less legible and permanent than the original;
- “profit and loss account” includes income and expenditure account, revenue account or any other account showing the results of the business of a company for a period;
- “public notice” means a notice published in a newspaper circulating in Samoa, in Samoan and in English, conveying the general effect of a matter of thing done or intended to be done; and “publicly notified” has a corresponding meaning;
- “registered company auditor” means a person registered as such under section 10;
- “Registrar” means the person appointed as such under section 8, and includes a Deputy and an Assistant Registrar;
- “renewal fee” means an annual renewal fee, as defined in section 15;
- “resident agent” means a trustee company, an officer or wholly-owned subsidiary of a trustee company appointed to be such under section 51;
- “resident director” means an officer or wholly-owned subsidiary of a trustee company appointed to be such under section 43;
- “resident secretary” means a trustee company, an officer or wholly-owned subsidiary, of a trustee company appointed to be such under section 51;
- “satisfactory evidence of identity” means such evidence of identity as is required under the provisions of the Money Laundering Prevention Act 2007 or any successor

legislation and any regulations and Guidelines issued under that Act;

“surplus” means the excess of the assets of a company over its liabilities;

“Table A” means Table A of Schedule 2;

“Trustee Company” means a company incorporated for the purpose of undertaking or offering to undertake, as a whole or a part of its business, all or any of the duties of a trustee and which is registered under the Trustee Companies Act 1988;

“year” means calendar year.

(2) For the purposes of this Act, a person, including a company, is deemed to hold a beneficial interest in a share in a body corporate if that person, either alone or together with other persons, is entitled (otherwise than a trustee for, or on account of, another person) to receive, directly or indirectly, any dividends in respect of the share or to exercise, or to control the exercise of, any rights attaching to the share.

(3) Whenever in this Act any person holding or occupying particular office or position is mentioned or referred to, such mention or reference, unless the contrary intention appears, is to be taken to include all persons who must at any time after occupy for the time being the office or position.

(4) Any provision of this Act overriding or interpreting a company’s articles, except as provided by this Act, applies in relation to articles in force on or after the commencement of this Act, and apply also in relation to a company’s memorandum as it applies in relation to its articles.

(5) Where the provisions of this Act are inconsistent with the provisions of any other Act, other than the Constitution of the Independent State of Samoa, the provisions of this Act prevail.

3. Citation of reference - Where a provision of this Act refers:

- (a) to a part or section by a number but does not identify it as being part of any particular Act, the reference is to be read and construed as a reference to the part or section designated by that number, of or to this Act; or
- (b) to a division, subdivision, paragraph or subparagraph, clause or sub clause by a number but does not identify it as being part of any particular Act, the reference is to be read and construed as a reference to one of the following—

- (i) to the division, designated by that number, of the part in which the reference occurs;
- (ii) to the subsection, designated by that number, of the section in which the reference occurs;
- (iii) to the paragraph, designated by that number, of the section, subsection, Schedule or definition, or of the clause or sub clause of or in the Schedule, in which the reference occurs;
- (iv) to the subparagraph, designated by that number, of the paragraph in which the reference occurs;
- (v) to the clause or sub clause, designated by that number, of the Schedule in which the reference occurs as the case may require.

4. Related companies – (1) For the purposes of this Act, a body corporate, subject to the provisions of subsection (3) and (6), is deemed to be a subsidiary of another body corporate, if:

- (a) that other body corporate—
 - (i) control the composition of the board of directors of the first-mentioned body corporate;
 - (ii) controls more than half of the voting power of the first-mentioned body corporate; or
 - (iii) holds more than half of the issued shares or share capital of the first-mentioned body corporate (excluding any part thereof which carries no right to participate beyond a specified amount in a distribution of either profits and capital); or
- (b) the first-mentioned body corporate is a subsidiary of any body corporate which is that other body corporate subsidiary.

(2) For the purposes of subsection (1), the composition of a body corporate's board of directors is deemed to be controlled by another body corporate if that other body corporate by the exercise of some power exercisable by it, without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors and, for the purposes of this provision, that other body corporate is deemed to have power to make such an appointment if:

- (a) a person cannot be appointed as a director without the exercise in his or her favour by that other body corporate of such a power; or

(b) a person's appointment as a director follows necessarily from his or her being a director or other officer of that other body corporate.

(3) In determining whether one body corporate is subsidiary of another body corporate:

(a) any share held or power exercisable by that other body corporate in a trustee or fiduciary capacity is to be treated as not held or exercisable by it;

(b) subject to paragraph (c) and (d), any share held or power exercisable —

(i) by any person as a nominee for that other body corporate, except where that other body corporate is concerned only in a trustee or fiduciary capacity, is to be treated as held, or exercisable by, that other body corporate;

(ii) by, or by a nominee for, a subsidiary of that other body corporate, not being a subsidiary which is concerned only in a trustee or fiduciary capacity, is to be treated as held or exercisable by that other body corporate;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned body corporate or of a trust deed for securing any issue of such debentures is to be disregarded; and

(d) any shares held or power exercisable by, or by a nominee for, that other body corporate or its subsidiary, not being held or exercisable as mentioned in paragraph (c) must be treated as not held or exercisable by that other body corporate if the ordinary business of that other body corporate or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) A reference in this Act to the parent company of a body corporate must be read as a reference to a body corporate of which the last-mentioned body corporate is a subsidiary.

(5) Where a company is the parent company of another body corporate, that company and that other body corporate are, for the purposes of this Act, deemed to be related to each other and to be related to every other body corporate so related to either of them or

related directly, or by a series of such relationships, to any other related body corporate.

(6) The possession of a bearer debenture of a company must not make the company a subsidiary of the possessor; and the possession of a founder's right certificate must not make the company a subsidiary of the trustee company which possesses it.

5. Application of Act – Unless the context otherwise requires, no provision of this Act applies to any other body corporate incorporated in Samoa.

6. Permitted purposes for incorporation – (1) A company may be incorporated only for the ultimate benefit of charity, but may carry on any business which may lawfully be carried on by an individual save that it must not carry on the businesses of banking, insurance or acting as a trustee company unless it is licensed or otherwise permitted so to do under the laws currently in force in Samoa.

(2) For the purposes of this section, a company must not be regarded as carrying on business as a trustee company or carrying on the business of acting as a trustee company, by acting merely as the trustee or one of the trustees of not more than 3 foreign trusts.

(3) No company may be appointed, or accept appointment, as trustee of a trust unless the trust is subject to the laws of Samoa and is, or is intended to be a foreign trust under the Trusts Act 2014.

(4) Even though a company may only be incorporated for the ultimate benefit of charity, neither this Act nor the provisions of a company's memorandum prevents benefit accruing other than to charity in the normal course of carrying on of any business by a company pursuant to subsection (1) nor must that ultimate benefit detract from or otherwise influence or prejudice the rights and powers of any subsidiary or associated entities of a company as conferred by such other entity's own constitutional documents.

7. Special permission to be a trustee – (1) Despite section 6, a company may apply to the Authority, in such form and with such content as the Authority may require, for permission to act as trustee of more than 3 foreign trusts under the Trusts Act 2014 without being licensed as a Trustee Company.

(2) The Authority may decline an application made under subsection (1), or grant permission upon terms, as the Authority sees fit.

PART 2
ADMINISTRATION OF ACT

8. Registrar – (1) The Authority must appoint:

- (a) a Registrar of Special Purpose International Companies to carry out the duties and functions vested in him or her by or under this or any other Act and such appointment must be publicly notified;
- (b) a Deputy or Assistant Registrars of Special Purpose International Companies and other officers as are required for the purposes of this Act.

(2) Anything by this Act appointed or authorised or required to be done by the Registrar may be done by the Deputy or Assistant Registrar and is valid and effectual as if done by the Registrar subject to any conditions or restrictions as may be set out in the instrument of appointment or in any subsequent changes to it.

(3) All courts, judges and person acting judicially must take judicial notice of the seal and also the signature of the Registrar and of any Deputy or Assistant Registrar.

(4) For the purposes of ascertaining whether a company is complying with the provisions of this Act the Registrar or any person authorised by him or her may inspect any book, minute book, register or record required by or under this Act to be kept by the company.

(5) A person who, except for the purposes of this Act, or except in the course of any criminal proceedings, makes a record of divulges or communicates to any other person any information which he or she has acquired by reason of such inspection commits an offence.

(6) A company or any officer of a company must, on being required by the Registrar, or a person authorised by the Registrar, produce any such book, register or record.

(7) A company or any officer of a company must not obstruct or hinder the Registrar or a person so authorised while exercising any of the powers referred to in subsection (4).

(8) Fees to be paid to the Registrar under this Act are as prescribed by regulations.

9. Lodging documents – (1) Except as provided to the contrary in this Act, every document required or permitted to be lodged or filed with the Registrar under this Act must be lodged or filed through a trustee company.

(2) Except as provided to the contrary in this Act, every application to the Registrar for any certificate issued under this Act or for any extract or copy of any document filed with the Registrar must be made through a trustee company.

(3) Subsection (2) must not apply to an application made in respect of a company by a foreign government where the document, certificate, extract or copy is for official use by the applicant foreign government.

10. Registered company auditors – (1) From the date this Act commences, a person registered as a registered company auditor under the International Companies Act 1988 is deemed to be registered as a registered company auditor under this Act for the remainder of the period of their registration under that other Act without any further fee being payable.

(2) From the date this Act commences, a person becoming registered as a registered company auditor under the International Companies Act 1988 is deemed to be registered as a registered company auditor under this Act for the period of their registration under that other Act without any further fee being payable.

11. Registered company auditors – (1) A person or company must not perform the duties of auditor of a company unless he or she or it is a registered company auditor.

(2) The Registrar must keep a register of registered company auditors.

(3) The Register of registered company auditors maintained by the Registrar of International and Foreign Companies under the International Companies Act 1988 is the register required to be kept by the Registrar under subsection (2).

(4) A person must not knowingly consent to be appointed, and must not knowingly act, as auditor for any company under this Act and must not prepare for or on behalf of a company any report required by this Act to be prepared by a registered company auditor:

- (a) if he, she or it is not at the time of his or her so acting or preparing such report a registered company auditor;
- (b) if he, she or it, or any company related to him or her or it is indebted to the company or related company;
- (c) if he, she or it, or any company related to him or her or it is an officer of the company;
- (d) if he, she or it or any company related to it is—
 - (i) a partner, employer or employee of the company;
 - or

- (ii) a partner or employer or employee of an officer of the company; or
- (e) if he or she is—
 - (i) a spouse of an officer of the company; or
 - (ii) a spouse of an employee of an officer of the company.

(5) For the purposes of subsection (4) a person is deemed to be an officer of a body corporate that is deemed to be related to the company by virtue of section 4(5) or he or she has, at any time within the proceeding period of 12 months, been an officer of the company or of such other body corporate.

(6) For the purposes of this section, a person is not deemed to be an officer by reason only of his or her having been appointed as auditor of another body corporate.

(7) A person must not appoint a person as auditor of a company unless the person to be appointed auditor has prior to such appointment consented in writing to act as such auditor.

12. Official liquidator – (1) From the date this Act commences, a person registered as an official liquidator under the International Companies Act 1988 is deemed registered as an official liquidator under this Act for the remainder of the period of their registration under that other Act without any further fee being payable.

(2) From the date this Act commences, a person becoming registered as an official liquidator under the International Companies Act 1988 is deemed registered as an official liquidator under this Act for the period of their registration under that other Act without any further fee being payable.

13. Appointment of official liquidator – (1) For the purposes of proceedings in winding up companies the Registrar may, by public notice appoint any person to be an official liquidator.

(2) The Registrar may revoke any appointment made under subsection (1) or by virtue of section 12.

(3) A person must not be appointed or act as liquidator of a company:

- (a) if he or she is not an official liquidator; or
- (b) if he, she or a body corporate related to him or her is indebted to the company in liquidation or to body corporate which is deemed to be related to that company in liquidation by virtue of section 4(5); and
- (c) unless he or she consents.

(4) The Registrar must keep a register of official liquidators.

(5) The register of official liquidators maintained by the Registrar of International and Foreign Companies under the International Companies Act 1988 is the register required to be kept by the Registrar under subsection (4).

(6) Where an official liquidator is appointed to be a liquidator of a company, whether by the Court or in a voluntary winding up, he or she must immediately notify the Registrar in writing of any interest which he, she or any company related to him or her has in the company, as an officer, employer or employee of the company or as a partner employer or employee of an officer of the company.

14. Registers – (1) The Registrar may, subject to this Act and regulations, keep such registers as he or she considers necessary and in such form as he or she thinks fit.

(2) The trustee company in possession of the Founder's Rights Certificate and any officer, debenture holder, director or liquidator of a company, or any other person with the written permission of such trustee company, officer, debenture holder, director or liquidator or any foreign government who can demonstrate to the Registrar that it has a good reason for doing so, may, subject to this Act and on payment of the prescribed fee:

- (a) inspect any document filed by the Registrar in respect of the company; or
- (b) require any certificate issued under this Act or a copy or extract from any document kept by the Registrar in respect of the company to be given or certified by the Registrar,

but, except as provided under this section, a document filed by the Registrar in respect of a company must not be available for inspection or copying.

(3) Despite subsection (2), except in the case of an application by a foreign government or any case where the prior written consent of the company or the trustee company in possession of the Founder's Rights Certificate is given or where copies of the memorandum and articles of the company are made available for inspection or copying pursuant to section 27, the Registrar must not allow any person to inspect any document or provide any person with a copy or extract of any document, unless the Registrar have given reasonable notice to the company of the Registrar's intention to do so, such notice to include details of the relevant documents and the persons who will inspect or be provided with a copy of such documents.

(4) A copy or extract from any document filed by the Registrar certified to be a true copy or extract under the hand and seal of the Registrar is admissible in any proceedings in evidence as if it were the original document or part of the original so extracted.

(5) In any legal proceedings, a certificate under the hand and seal of the Registrar that a requirement of this Act specified in the certificate:

- (a) had or had not been complied with at a date or within a period specified in the certificate; or
- (b) had been complied with upon a date specified in the certificate but not before that date,

is *prima facie* evidence of the matter specified in the certificate.

(6) If the Registrar is of an opinion that any document lodged with him or her:

- (a) contains a matter contrary to law;
- (b) by reason of any omission or mis description has not been duly completed;
- (c) does not comply with the requirements of this Act;
- (d) contains any error, alteration or erasure; or
- (e) has not been submitted through a trustee company,

he or she may refuse to register the document and request that the document be appropriately amended or completed and re-lodged or that a fresh document be lodged in its place.

(7) If a company or person, having been in default in complying with:

- (a) any provision of this Act or of any other law which requires the lodging in any manner with the Registrar of any return, account or other document or the giving of notice to him or her on any matter; or
- (b) any request of the Registrar to amend or complete and re-lodge any document or lodge a fresh document,

fails to make good the default within 60 days after the service on the company or person of a notice requiring it to be done, then the Registrar may order the company and any officer thereof or such person to make good the default within such time as is specified in the order; and a failure to comply with such order constitutes an offence by the person to whom the order was addressed.

(8) Nothing in this section prejudices the operation of any enactment or other section of this Act imposing penalties on a company or a company's officers or other person in respect of any default.

PART 3
CONSTITUTION OF SPECIAL PURPOSE
INTERNATIONAL COMPANIES

Division 1 – Incorporation

15. Formation of Special Purpose International Company –

(1) Subject to this Act, a trustee company may, by the subscribing of their name to a memorandum and complying with the requirements as to registration, form a company for any lawful and permitted purpose.

(2) A trustee company desiring the incorporation of a company must lodge with the Registrar the memorandum and articles of the proposed company together with true copies thereof and the other documents required to be lodged by or under this Act, and the Registrar may, upon payment of the prescribed fees and subject to this Act, register the company by filing the memorandum and articles.

(3) The Registrar may require the trustee company lodging the documents referred to in subsection (2) to lodge with those documents a certificate by the trustee company stating that, to the best of the trustee company's knowledge, all or any of the requirements of this Act have been complied with and the Registrar may accept that certificate as sufficient evidence of such compliance.

(4) On the filing of the memorandum and articles under subsection (2) and if it has been required by the Registrar under subsection (3) the certificate lodged under subsection (3) the Registrar must certify under his or her hand and seal that the company is, on and from the date specified in the certificate, incorporated and when he or she so certifies he or she must deliver his or her certificate to the trustee company which lodged the documents.

(5) Every company must pay to the Registrar on the 30 November of each year following that of its incorporation, such annual renewal fee as may be prescribed.

(6) Until such time as a company is dissolved pursuant to the provision of this Act, the company continues its corporate existence (without rendering defective any legal or other proceedings instituted by or against the company or affecting any rights, powers, authorities, duties, functions, liabilities or obligations of the

company or any person) even though an annual renewal fee which is due and payable by the company has not been paid.

(7) On and from the date of incorporation specified in the certificate of incorporation of a company, the company is a body corporate by the name contained in the memorandum, capable of exercising all the functions of a company and of suing and being sued, having a corporate seal and save as specified in its memorandum having perpetual succession.

(8) A certificate of incorporation under the hand and seal of the Registrar is conclusive evidence that all the requirements of this Act in respect of incorporation and of matters precedent and incidental to it have been complied with and that the company referred to in the certificate was duly incorporated under this Act.

(9) The certificate of incorporation delivered under subsection (4) must state the name of the trustee company to which it is delivered, which constitutes that trustee company as the first possessor of the founder's rights in respect of the company named in the certificate.

(10) A trustee company upon receipt of the certificate of incorporation referred to in subsection (4) must make an appointment in writing in the form required by Table A and effective for the purpose of appointing as the first director of the company a resident director from the trustee company.

(11) Until the issue of the Founder's Rights Certificate referred to in section 16 a resident director appointed pursuant to subsection (10) may not be removed except by the trustee company which made the appointment and then only to appoint another resident director from that trustee company as resident director in the substitution for the first director so appointed.

16. Issue of Founder's Rights Certificate – (1) The company must, as soon as it is convenient after incorporation, prepare a form of Founder's Rights Certificate which must incorporate the provisions set forth in Table B of Schedule 2 and must cause the same to be signed by the resident director and delivered to the trustee company named in the certificate of incorporation. The Founder's Rights Certificate must be entered in the records of the company.

(2) Despite anything to the contrary in this Act, every Founder's Rights Certificate issued by a company must be physically lodged with the trustee company whose office provides the registered office for the company.

(3) The trustee company must not release the Founder's Rights Certificate or part with the physical possession of the document, unless the Founder's Rights Certificate is to be cancelled by the company.

(4) Where a company acts contrary to subsection (1), the company and every officer of the company who is responsible for the contravention commits an offence.

(5) If default is made by a trustee company in complying with subsection (3) the trustee company and an officer of the trustee company who is knowingly in default commits an offence.

(6) In addition to those provisions set forth in Table B of Schedule 2 and without prejudice to other provisions of this Act, the Founder's Rights Certificate may grant to the holder thereof:

- (a) the power to determine, in its discretion, specific charities to benefit from the distribution of the company's final surplus upon liquidation in the event that none are named in the memorandum, and to notify the company in writing of such determination;
- (b) the power to nominate (and vary any such nomination), by written notice to the company, a specific person with right, exercisable by written notice to the company, to require the company to commence to be wound up voluntarily either immediately upon receipt of such notice or upon a later date specified in it;
- (c) the power to specify, by written notice to the company, regulations for the directors to follow as to the manner of investment of the whole or any part of the company's contributions; and, if lawful, such regulations has the same force, and is binding upon the directors, as if included in the company's memorandum and takes effect 30 days from receipt by the company of the notice containing the same;
- (d) the right, exercisable by deed served upon the company, to revocably assign to any specified person and for a specified period the right to exercise such of its powers as specified in the deed.

(7) In the event that it comes to the notice of a company that the holder of its Founder's Rights Certificate has ceased to exist it must immediately give notice of such fact to the Registrar.

(8) In the event that it comes to the attention of the Registrar, either by virtue of a notice given under subsection (7) or otherwise, that the holder of the Founder's Rights Certificate of a company has

ceased to exist the Registrar must direct that company in writing to rectify the absence of a holder within 30 days of the direction; and a failure to act in accordance with the direction entitles the Registrar to apply section 122.

17. Requirements as to memorandum and alteration – (1)

The memorandum of every company must be printed, divided into numbered paragraphs, dated, and state the following:

- (a) the name of the company;
- (b) the full name of the trustee company which is the subscriber to the memorandum;
- (c) that the subscriber to the memorandum desires the formation of a company;
- (d) the property that the subscriber, on incorporation of the company, will contribute to the company as the initial contribution to the company;
- (e) that all contributions to company are the property of the company solely and may only be distributed by the company to any or more charities specifically named in the memorandum or to charity, or for charitable purposes, generally; and
- (f) that the company has no members and that no person making a contribution to the company, be that the subscriber or any subsequent contributor, has any legal or beneficial interest in the company or its property.

(2) The memorandum may allow, in the case of a company formed to benefit charitable purposes generally, the holder of the Founder's Rights Certificate to nominate by written notice to the company specific charities or charitable purposes to benefit from distributions by the company.

(3) Without prejudice to the provisions of subsection (2), a company may alter its memorandum to add or remove any specific charity or charitable purpose named in it.

(4) The memorandum may state a specific date upon which, or a specific event upon the happening of which, the company commences winding up voluntarily.

(5) A company may alter its memorandum, prior to the date or the happening of the event specified under subsection (4), to change such date to any later date than, or to change the specific event to any other specific event not already occurred from, that specified in the memorandum; and a company may alter its memorandum to include, where none was previously included, a specific later date,

or a specific event which has not already occurred, upon which the company commences winding up voluntarily.

(6) For the purposes of subsections (4) and (5) a specific date may be determined by reference to the passing of a specific number of days from the happening of a specific event.

(7) The memorandum of a company must, in addition to the requirements of subsection (1), state the company's objects.

(8) Subject to any limitation in its memorandum and to subsection (4), a company may alter any of the objects or powers set out in the memorandum by a written resolution of the holder of the Founder's Rights Certificate.

(9) A company may not alter its memorandum or objects to the effect that the contributions to or the surplus of the company, or any part thereof, may be distributed by the company other than to charity or for charitable purposes.

(10) A company that alters its memorandum must, within 21 days of the resolution having been passed, submit the original and a copy of the alteration and the resolution authorising such alteration to the Registrar and, unless the alteration is in breach of subsection (9), the Registrar must retain and register the copy of the alteration and the resolution; and upon registration the resolution is effective from the date of its passing; the original must be returned to the company with the date of its registration endorsed on it by the Registrar.

(11) If the Registrar declines to register an alteration because the alteration is in breach of subsection (9) the Registrar must return to the company the original and the copy submitted pursuant to subsection (10) endorsed by the Registrar that registration is declined.

(12) A company which has registration of an alteration declined by the Registrar pursuant to subsection (6), must as soon as practicable after the return of the document by the Registrar endorsed that the Registrar has so declined, must take such steps as are necessary to rescind the resolution which effected the alteration declined.

(13) In the event that the memorandum of a company states that a specific charity is to benefit from distributions and that specific charity ceases to exist, the doctrine of *cy près* is deemed to apply to enable the holder of the Founder's Rights Certificate to exercise the power referred to in subsection (2), if granted by the memorandum, and to enable the company to exercise the power granted by subsection (3), to name a new specific charity in the manner allowed by that doctrine.

Division 2 – Status and Name

18. Powers of companies – (1) A company must, unless expressly excluded or modified by the memorandum or the articles, have all of the powers of a natural person including the powers set forth in Schedule 1 and such other powers as are set out in its memorandum or articles and this Act.

(2) The powers of a company are subject to the terms of the memorandum and articles be exercisable in Samoa and elsewhere.

(3) Where the exercise by the directors of any power of the company:

(a) does not immediately advance any charitable purpose; or

(b) advances or assists some other person,

such exercise is a valid act on behalf of the company if the directors honestly believe that the exercise of such power will in due course result in the advancement of a charitable purpose and will not result in the company thereby being incapable of meeting its obligations to its creditors as they fall due, within the meaning of this Act.

(4) Nothing in this section requires a company to list any of its powers in its memorandum or articles.

19. Pre-incorporation contracts – (1) This section applies to:

(a) any contract purporting to be made by company before its incorporation; and

(b) any contract made by a person on behalf of company before and in contemplation of its incorporation.

(2) Despite any rule of law or equity, any contract to which this section applies, may be ratified within such period as may be specified in the contract, or if no period is specified, then within 30 days after the incorporation of the company in the name of which, or on behalf of which, it has been made. A contract so ratified, upon ratification, is valid and enforceable as if the company had been a party to the contract when it was made.

(3) For the purposes of this section, a contract to which this section applied may be ratified by a company in the same manner as a contract may be made by a company under this Act, and the provisions of this Act has effect as if references to making a contract were references to ratifying a contract.

(4) Despite any rule of law or equity, in any contract to which this section applies, unless a contrary intention is expressed in the contract, there is an implied warranty by the person making the contract in the name of, or on behalf of, the company:

- (a) that the company will be incorporated within such period as may be specified in the contract, or if no period is specified, then within 30 days after the making of the contract; and
- (b) that the company will ratify the contract within such period as may be specified in the contract, or if no period is specified, then within 30 days after the incorporation of the company.

(5) The amount of any damages recoverable in an action for breach of warranty implied in any such contract is the same as the amount of damages that would be recoverable in an action against the company for damages for breach by the company of their unperformed obligations under the contract as if the contract has been ratified and cancelled.

(6) Where a company after its incorporation does not ratify a contract to which this section applies, any party to that contract may apply to the Court for an order directing the company to return to that party any property, whether real or personal, acquired by, or for the benefit of, the company pursuant to the contract, or for any other relief in favour of that party respecting any such property, and the Court may, if it considers it just and equitable to do so, make any order or grant such relief as it thinks fit and whether or not an award of damages has been made under subsection (5) of this section.

(7) In any proceedings against a company for breach of a contract to which this section applies and which has been ratified by the company, the Court may, on the application of the company, any other party to the proceedings, or of its own motion, make such order for the payment of damages or other relief, in addition to or in substitution for any order which may be made against the company, against any person by whom that contract was made in the name of, or on behalf of the company, as the Court considers just and equitable.

(8) Where a company, after its incorporation and with consent of all other parties to the contract, ratifies a contract to which this section applies the liability of the person making the contract in the name of, or on behalf of, the company must, in respect of the ratified contract (including any liability under an order made by the Court thereunder for the payment of damages), be discharged.

(9) In this section “contract” means any legally binding transaction.

20. Ultra vires transactions – (1) Save in respect of a prohibited act described in subsection (4), no act of a company including the entering into of an agreement by the company, and no conveyance or transfer of property whether real or personal to or by a company is invalid by reason only of the fact that the company was without capacity or power to do such act or to execute or take such conveyance or transfer.

(2) Any such lack of capacity or power may be asserted or relied upon only in:

- (a) proceedings against the company, where the company has issued debentures secured by a floating charge over all or any of company's property, by the holder of any of those debentures, or by a trustee company acting as trustee for the holders of those debentures, or by the holder of the Founder's Rights Certificate in the case of a prohibited act described in subsection (4) to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the company; or
- (b) any proceedings by the company against the present or former officers of the company.

(3) If the unauthorised act, conveyance or transfer sought to be restrained in any proceedings under subsection (2)(a) is being or is to be performed or made pursuant to any contract to which the company is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court deems it to be just and equitable, set aside and restrain the performance of the contract and may allow to the company or to the other parties to the contract, as the case requires, compensation for the loss of damage sustained by either of them which may result from the setting aside and restraining of the performance of the contract but anticipated profits to be derived from the performance of the contract must not be awarded by the Court as a loss or damage sustained.

(4) No company may enter into any agreement to do, or do any act in or towards implementing, a prohibited act; anything which would constitute the distribution of the capital of the company other than to charity or for charitable purposes is a prohibited act.

21. Names of companies – (1) A company must not be registered by a name that, in the opinion of the Registrar, is undesirable or is a name, or includes a name, of a kind that the Registrar is not otherwise willing to accept for registration.

(2) A company must have as part of and at the end of its name either:

- (a) the words “Special Purpose International Company” or the abbreviation “SPIC”; or
- (b) the word “Foundation” or the abbreviation “Fdn”.

(3) Despite subsection (2), a company may, in lieu of any of the words or abbreviations in subsection (2), have as part of its name any other words or popular abbreviation of those words in any language being any words or abbreviations which a trustee company can satisfy the Registrar connotes the existence of a separate legal entity not having members and being exclusively for the fulfilment of its objects and such words or abbreviation may appear at the beginning, the end or elsewhere in the name of the company in accordance with common practice as the Registrar may be satisfied.

(4) Any person or entity which carries out activities under any name or title being any word or abbreviation referred to in subsection (2) or (3) as if it were a company incorporated under this Act commits an offence unless it is a company.

(5) No description of a company is deemed inadequate or incorrect by reason of the use of:

- (a) the abbreviation “Co” in lieu of the word “Company” contained in the name of the company;
- (b) the symbol “&” in lieu of the word “and” contained in the name of the company or the word “and” in lieu of the symbol “&” in the name of the company.

(6) A trustee company may lodge with the Registrar an application in the prescribed form for the reservation of a name set out in the application as:

- (a) the name of any intended company; or
- (b) the name to which a company proposes to change its name.

(7) If the Registrar considers that the application is made bona fide and is satisfied that the proposed name is a name by which the intended company or the company could be registered without contravention of subsection (1), he or she must, upon payment of the prescribed fee, reserve the proposed name for a period of three (3) months from the date of the lodging of the application.

(8) If, at any time, during the period for which a name is reserved, an application is lodged with the Registrar for an extension of that period and the Registrar is satisfied as to the bona fides of the application, he or she may upon payment of the

prescribed fee extend that period for a further period of three (3) months.

(9) During a period for which a name is reserved, a company other than the company or intended company in respect of which the name is reserved, must not be registered under this Act, or any other Act, whether originally or on change of name, under the reserved name or under any other name that, in the opinion of the Registrar, so closely resembles the reserved name as to be likely to be mistaken for that name.

(10) The reservation of a name under this section in respect of an intended international company or an international company does not in itself entitle the intended company or company to be registered by that name, either originally or on change of name.

22. Change of name – (1) A company may by written resolution of the holder of the Founder's Rights Certificate and with the approval of the Registrar change its name to a name by which the company could be registered without contravention of section 21(1).

(2) If the name of a company, whether through inadvertence or otherwise and whether originally or by change of name, is a name by which the company could not be registered without contravention of section 21(1), the company may by written resolution of the holder of the Founder's Rights Certificate change its name to a name by which the company can be registered without contravention of that section and, if the Registrar so directs, may change it within 30 days after the date of the direction or such longer period as the Registrar allows; and if the company fails to comply with such direction, it commits an offence.

(3) A change of name pursuant to this Act does not affect the identity of the company or any rights or obligations of the company or render defective any proceedings by or against the company. Any legal proceedings that might have been continued or be commenced by or against the company by its former name may be continued or commenced by or against the company by its new name.

(4) Where a company changes its name under this section, it must immediately surrender to the Registrar its certificate of incorporation and provide to the Registrar satisfactory evidence of the identity of the trustee company which is the current holder of the Founder's Rights Certificate and the Registrar must issue a new certificate bearing the company's new name and the name of that trustee company as such current holder and deliver the same to that

trustee company, and the change of name takes effect only from the date of the issue of the new certificate.

(5) Upon the issue of a certificate pursuant to subsection (4), the trustee company to which it is delivered must immediately cause to be issued by the company a new Founder's Rights Certificate bearing the company's new name in exchange for the Founder's Rights Certificate bearing the previous name of the company and cause the company to cancel the Founder's Rights Certificate delivered for exchange bearing the previous name of the company.

23. Articles of association – (1) There may be lodged with the memorandum of a company articles signed by the subscriber to the memorandum prescribing regulations for the company, which modify the articles contained in Table A of Schedule 2.

(2) Articles must be:

- (a) printed;
- (b) divided into numbered paragraph; and
- (c) be signed and sealed by the trustee company which is the subscriber to the memorandum.

24. Adoption of Table A – (1) A company may adopt all or any of the articles contained in Table A of Schedule 2.

(2) If articles are lodged and filed which neither exclude the articles contained in Table A nor modify the articles contained in that Table, the articles in Table A are, so far as applicable, the articles of the company in the same manner and to the same extent as if they were contained in the articles lodged and filed.

25. Alteration of articles – (1) Subject to any limitation in its articles a company may alter its articles by a written resolution of the holder of the Founder's Rights Certificate.

(2) A company that alters its articles must, within 21 days of the resolution having been passed, submit a copy of the alteration and the resolution authorising such alteration to the Registrar and the Registrar must retain and register the copy of the alteration and the resolution; and upon registration the resolution is effective from its date of passing.

26. Effect of memorandum and articles - Subject to this Act, the memorandum and articles, when filed, bind the company and the holder of the Founder's Rights Certificate to observe all the provisions of the memorandum and articles.

27. Copies of memorandum and articles – (1) A company, on being so required by the holder of the Founder's Rights Certificate or any director, must send to the holder or director a copy of the memorandum and of the articles subject to payment to the company of such prescribed fee (if any) as the company requires.

(2) The Registrar may, when so requested by any person and with the consent of the company, make available for inspection or copying, in whole or in part, the memorandum and articles of that company and any alterations made to them, which have been filed and registered, upon payment to the Registrar of such amount (if any) as the Registrar may determine.

(3) Where an alteration is made in the memorandum or articles of a company, a copy of the memorandum or articles must not be issued by the company after the date of alteration unless and until the alteration has been registered with the Registrar, and:

- (a) the copy is in accordance with the registered alteration;
or
- (b) a printed copy of the resolution making the registered alteration is annexed to the copy of the memorandum or articles with evidence of the date of registration and the particular clauses or articles affected are indicated in ink.

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

28. Transactions and branches – (1) Contracts on behalf of a company may be made as follows:

- (a) in case of a contract which if made by private persons would by law be required to be in writing under seal, may be made on behalf of the company in writing under the common seal of the company and signed either by a director or by some other person appointed by the directors for the purpose; and such signature need not be made contemporaneously with the affixing of the common seal of the company;
- (b) in case of a contract which if made between private persons would by law be required to be in writing signed by the parties to be charged therewith, may be made on behalf of the company in writing and signed by any person acting under its authority, express or implied;

(c) in case of a contract which if made between private persons would by law be valid although made by parole only, and not reduced into writing, may be made by parole on behalf of the company by any person acting under its authority express or implied, and any contract so made is effectual in law and binds the company and its successors and all other parties to the contract, and may be varied or discharged in the manner in which it is authorised to be made.

(2) A document or proceedings requiring authentication by a company may be signed by an authorised officer of the company and need not be under its common seal.

(3) A company may by writing under its common seal empower any person either generally or in respect of any specified matters as its agent or attorney to execute deeds on its behalf and a deed signed by such an agent or attorney on behalf of that company under seal, or, subject to subsection (5) under the appropriate seal of the company, binds the company and all persons dealing in good faith are entitled to presume the regular and proper execution of the deed, and to act accordingly.

(4) A company if authorised by its articles and with the prior consent of the Registrar may establish a branch in any part of the world.

(5) A company and any of its branch may have for use in any place outside Samoa a duplicate common seal which is a facsimile of the common seal of the company; in the case of a branch the relevant seal must have the addition on its face the name of that branch and that seal is to be known as the branch seal.

(6) Where a company has established a branch it may in the instrument establishing the branch or in a subsequent instrument appoint 1 or more persons to be branch directors and to constitute a local board, make provision for a branch seal and for its custody and prescribe the person by whom such seal is to be affixed; and subject to any directions or restrictions imposed by the directions of the company, a branch may bind the company.

(7) A branch may enter into transactions in the same manner as the company may enter into transactions.

(8) Instruments made or authenticated under or by use of any branch seal of a company are effective as if the common seal of the company had been affixed to it, and the date on which and the place at which the branch seal is affixed to any instrument must be shown on the instrument.

29. Persons having dealings with Special Purpose International Companies – (1) A person having dealings with a company is, subject to subsection (3), entitled to make, in relation to those dealings, the assumptions referred to in subsection (2) and, in any proceedings in relation to those dealings, any assertion by the company that the matters that the person is so entitled to assume were not correct must be discharged.

(2) The assumptions that a person is, by virtue of subsection (1), entitled to make in relation to dealings, transactions or acts with a company are:

- (a) that, at all relevant times, the memorandum and articles of the company have been complied with;
- (b) that a person who appears, from the register of directors of the company, to be a director of that company has been duly appointed and has authority to bind the company, and authorise others to do so, free of any limitation under the articles of the company;
- (c) that a person who is held out by a company to be an officer or an agent of the company has been duly appointed and has authority to exercise the powers and perform the duties customarily exercisable or performed by an officer or agent of the kind concerned;
- (d) that a document has been duly authorised and executed by a company in accordance with section 28, whether or not the common seal of the company has been affixed and without the need to enquire as to whether or not a valid meeting of the relevant officers was, in fact, properly held; and
- (e) that the officers of the company properly perform their duties for the company.

(3) Despite subsection (1), a person is not entitled to make an assumption under subsection (2) in relation to dealings with the company if the dealings concern a prohibited act as defined in section 20(4) or if he or she had actual knowledge, or suspected, that the matter that, but for this subsection, he or she would be entitled to assume is not correct; but save in respect of prohibited acts a person is presumed to act in good faith unless the contrary is proven.

Division 3 – Debentures and Charges

30. Power to issue debentures – (1) Subject to this Division and to the terms and conditions of its memorandum or articles, a company may issue debentures on such terms and conditions as it thinks fit and in particular but without limiting the generality of the foregoing may issue debentures constituting a charge on any or all the assets of the company.

(2) No debentures may be issued to bearer.

(3) The debt payable under any debenture whether sealed or signed on behalf of the company is a specialty debt of the company located in Samoa, save where issued by a branch of a company when it is to be located at that branch.

(4) Every debenture of a company must bear a serial number and must contain the following:

- (a) the name of the company;
- (b) the date of issue of the debenture;
- (c) a statement of the name of the debenture holder;
- (d) a statement of the amount for which such debenture is issued;
- (e) the date upon which such amount is due and payable, if not payable on demand;
- (f) the currency or currencies (not being Samoa currency) in which the principal and interest are payable;
- (g) the rate of interest, if any, per annum payable on it;
- (h) such other provisions necessary to reflect the rights of the person to whom it is issued and the obligations of the company.

31. Company to maintain Register of debentures – (1) Subject to the provisions of this section, every company which issues debentures must keep and maintain a register of debentures at the registered office of the company in Samoa recording all of the debentures issued by the company.

(2) A company may cause to be kept in any place outside Samoa a branch register of debentures issued by that branch.

(3) A branch register of a company's debentures must be kept in the same manner in which the principal register is by this Act required to be kept.

(4) A company may discontinue a branch register.

(5) Where a debenture is registered on a branch register the debenture and all rights arising from it must be situated in the place where it is registered and unless otherwise expressed in the

debenture the principal and interest is payable in the money of the place of registration calculated at the exchange rate at noon on the date on which it becomes due and payable (excepting at all times Samoa currency).

(6) A debenture registered in a branch register may be distinguished from a debenture registered in the principal register.

(7) No debenture holder may transfer a debenture issued by a company from 1 register to another but the company may transfer a debenture from 1 register to another, and any company wishing to so transfer a debenture must first obtain the written consent of the debenture holder to such transfer (provided that the company is obliged to obtain such consent from the holder for the time being of a bearer debenture unless the holder has, in writing, advised the company of his or her address for notice).

(8) Upon the surrender to a company of a debenture the company must enter in the appropriate register of debentures the fact and date of its surrender.

32. Perpetual debentures – (1) A condition contained in a debenture or in a deed for securing a debenture is not invalid by reason only that the debenture is thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of law or equity to the contrary notwithstanding.

(2) Subject to subsection (3), despite anything in any debenture or trust, the security for a debenture issued by a company which is irredeemable or redeemable only on the happening of a contingency, if the Court so orders, be enforceable immediately or at such other time as the Court directs if, on the application of the trustee for the holder of the debenture or, where there is no trustee, on the application of the holder of the debenture, the Court is satisfied that:

- (a) at time of the issue of the debenture the assets of the company which constituted or were intended to constitute the security were sufficient to discharge the principal debt and any interest on it;
- (b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60 per centum of the principal sum of moneys outstanding, regard being had to all prior charges and charges ranking *pari passu*, if any; and
- (c) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a

reasonable amount for depreciation are worth less than the principal sum and the company is not making sufficient profit to pay the interest due on the principal sum or, where no definite rate of interest is payable, interest on it at such rate as the Court considers would be a fair rate to expect from a similar investment.

(3) Subsection (2) does not affect any power to vary rights accept any compromise or arrangement created by the terms of a debenture or the relevant trust deed or under a compromise or arrangement between the company and its creditors.

33. Charges and filing of charges – (1) Subject to this Division, where a charge to which this section applies is created by a company, the company or any other person interested in the charge may cause to be lodged with the Registrar for filing within 42 days after the creation of the charge:

- (a) the instrument, if any, by which the charge was created or evidenced; or
- (b) a statement giving a short description of the property charged the amount thereby secured, nature of the instrument (if any), and the names of the charges or persons entitled to the benefit thereof.

(2) Where the instrument or a statement is not lodged with the Registrar in accordance with subsection (1), the charge, 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, is void against a liquidator and any creditor of the company.

(3) Any person who files an instrument or statement with 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 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.

(4) A request under subsection (3)(b) is subject to the payment of an additional fee as fixed by the Registrar.

(5) The failure by the Registrar to give any notification requested under subsection (3)(b) does not affect the validity of any

charge conferred by the instrument or statement, and the Authority is not liable for any consequence arising from such a failure.

(6) Nothing in subsection (1) prejudices any contract or obligation for repayment of the money secured by the charge and, when a charge becomes void under this section, the money secured immediately becomes payable.

(7) The charges to which this section applies are all charges (including any charge securing a contingent debt or obligation) whether fixed or floating on any asset of a company.

(8) Where a charge created in Samoa affects property outside Samoa the instrument creating or purporting to create a charge or a copy thereof accompanied by the verifying statutory declaration may be lodged for filing under and in accordance with subsection (1) even though further proceedings may be necessary to make the charge valid or effectual according to the law of the place in which the property is situated.

(9) When a series of debentures containing, or giving reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it is sufficient if there is lodged with the Registrar within 42 days after the execution of the instrument creating the charge, or, if there is no such instrument, after the execution of the first debenture of the series, a statement containing the following particulars:

- (a) the total amount secured by the whole series;
- (b) the date of the resolutions authorising the issue of the series and the date of the covering instrument, if any, by which the security is created or defined;
- (c) a general description of the property charged; and
- (d) the name of the trustee, if any, for the debenture holders together with -
 - (i) the instrument creating the charges; or
 - (ii) a copy of the instrument and a statutory declaration verifying the execution of the instrument and verifying the copy to be a true copy.

(10) For the purposes of subsection (9) where more than 1 issue is made of debentures in the series, there may be lodged with the Registrar within 42 days after each issue particulars of the date and amount of each issue, but an omission so to do in respect of any issue does not affect the validity of the debentures previously issued.

(11) Where a charge requiring registration under this section is created before the lapse of 42 days after the creation of a prior

unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or any part of the debt, then to the extent to which the subsequent charge is a security for the same debt or part thereof and so far as it relates to the property comprised in the prior charge, the subsequent charge is not operative or have any validity unless it is proved to the satisfaction of the Registrar that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purpose of avoiding or evading the provisions of this Division.

34. Negation of the rule in re charge card services limited –

(1) Despite any rule of law to the contrary, a charge or security given, or purported to be given, by a person (“the chargor”) in favour of another person (“the chargee”) where:

- (a) the charged property is or includes a debt due or to become due to the chargor from the chargee; and
- (b) which debt is situated in Samoa,

is deemed to be a charge over an asset and is valid and enforceable to the same extent as if the charge or security had been given over that debt in favour of any other person.

(2) For the purpose of subsection (1) of this section, a debt is deemed to be situated in Samoa if either:

- (a) the chargor is a company; or
- (b) the chargee is a company; and in either case
 - (i) the contract or deed evidencing the debt has been entered into (by 1 or all of the parties) in Samoa; or
 - (ii) the contract or deed evidencing the debt is, or is to be, given effect to (whether in whole or in part) in Samoa.

(3) Nothing in this section is to be construed in any way to limit validity or effect of:

- (a) any contractual, legal or equitable right of set off arising between the parties (including any right of a bank and the rules relating to matters of account between parties); or
- (b) any provision creating other rights, powers, obligations or the imposition of restrictions on obligations between a debtor and a creditor, and, for the avoidance of doubt, nothing in this section be

construed to require the giving of any charge or security by the parties to any contract or deed.

(4) For the purposes of this section any reference to a debt becoming due includes a reference to:

- (a) a credit balance of an account (whether or not ascertained at any particular time);
- (b) a contingent claim;
- (c) proceeds and receivables due.

35. Filing of pre-existing charges – (1) Where a company acquired any property which is subject to a charge of any such kind as may, if it had been created by the company after acquisition of the property, have been filed under this Division, the company or any other person interested in the charge may cause to be lodged with the Registrar for filing within 42 days after the date on which the acquisition is effected:

- (a) a statement giving a short description of the nature of the instrument, if any, by which the charge was created, the property charged, the amount thereby secured, and the names of chargees or persons entitled to the benefit thereof; or
- (b) a copy of the charge.

(2) Where any charge to which this section applies is not filed with the Registrar pursuant to subsection (1), the charge, so far as any security on the company's property or undertaking is conferred thereby, but without prejudice to any contract or obligation for repayment of the money thereby secured, is void against a liquidator and any creditor of the company.

36. Register of charges to be kept by Registrar – (1) The Registrar must keep a register of all the charges lodged for filing under this Division and must enter in the register with respect to those charges to the following particulars:

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are required to be contained in a statement furnished under section 33(9); and
- (b) in the case of any other charge—
 - (i) if the charge is a charge created by a company, the date of its creation; or if the charge was a charge existing on property acquired by a company, the date of the acquisition of the property;

- (ii) the amount secured by the charge;
- (iii) a description sufficient to identify the property charged; and
- (iv) the name of the person entitled to the charge.

(2) The Registrar must, upon payment of the prescribed fee, issue a certificate of every charge filed stating, if applicable, the amount secured by the charge and the certificate is conclusive evidence that the requirements as to filing have been complied with.

37. Endorsement of Certificate of Registration on debentures – (1) A company must endorse on every debenture forming one of a series of debentures which is issued by the company and the payment of which is secured by a charge so registered:

- (a) a copy of the certificate of filing under section 36(2); or
- (b) a statement that filing has been effected and the date of filing.

(2) Subsection (1) does not apply to a debenture issued by a company before the charge was filed.

(3) A person who knowingly and wilfully authorises or permits the delivery of any debenture which is not endorsed as required by this section commits an offence.

38. Filing of satisfaction and release of property from charge – (1) When, with respect to a registered charge created by a company:

- (a) the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) the property or undertaking charged or any part thereof has been released from the charge or has ceased to form part of the company's property,

the company may lodge with the Registrar in the prescribed form a memorandum of satisfaction in whole or in part of the fact that the property or undertaking or any part thereof has been released from the charge or has ceased to form a part of the company's property or undertaking, as the case may be, and the Registrar must file such memorandum and must enter particulars of the same in the register.

(2) The memorandum must be accompanied by the prescribed fee and supported by evidence sufficient to satisfy the Registrar of the payment, satisfaction, release or ceasing referred to in subsection (1).

39. Extension of time and rectification of register of charges

– The Registrar, on being satisfied that the omission to file charge within the time required or that the omission or misstatement of any particular with respect to any such charge or in any memorandum of satisfaction was accidentally or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders or that, on other grounds, it is just and equitable to grant relief, may, on application lodged by the company responsible for the omission or misstatement or any person interested and on such terms and conditions as seem to the Registrar just and expedient, direct that the time for filing be extended or that the omission or misstatement be rectified.

40. Documents made outside Samoa – Where under this Division an instrument, deed, statement or other document is required to be lodged with the Registrar within a specified time, the time so specified must, by force of this section, in relation to an instrument, deed, statement or other document executed or made in a place outside Samoa, be extended by 28 days or such further period as the Registrar allows.

PART 4 MANAGEMENT AND ADMINISTRATION

Division 1 – Office and Name

41. Registered Office of Company – (1) A company must have a registered office in Samoa, which office is the principal office of a trustee company.

(2) Notice of the situation of the registered office of every company must be given in the prescribed form to the Registrar at the time of the incorporation of the company.

(3) The trustee company providing the registered office for a company may inform the Registrar, upon prior written notice to that company, that the trustee company no longer intends to provide the registered office for that company from a date not earlier than 1 month from the date of informing the Registrar and must inform the Registrar of the reason it so intends.

(3A) Within 1 month from the date of receipt of a notice from the trustee company under subsection (3), the Registrar must give notice to the company, at its last registered office, of the Registrar's intention to strike off the name of the company from the register

pursuant to section 122 unless another registered office is appointed pursuant to subsection (4).

(4) A company may, by resolution, change the situation of the registered office and notice of a change in the situation of the registered office of a company must be given in the prescribed form to the Registrar within 14 days of the change.

(5) If default is made in complying with any of the previous provisions of this section, the company and every officer of the company who is in default commits an offence.

(6) A trustee company must display at their principal office in a conspicuous position and in letters easily legible the names of such companies as have their registered office at their address.

42. Publication of name – (1) The name of a company must appear in legible characters on:

- (a) its common seal, every branch seal, and any other authorised seal; and
- (b) all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, endorsements, cheques, orders, receipts and letters of credit of or purporting to be issued or signed by or on behalf of the company.

(2) When it is in the control of a company so to do, a company that does not have the words in its name must include in all such documents as are set out in subsection (1)(b) a statement to the effect that the company is a Special Purpose International Company; and must state that it is incorporated in Samoa and set out the company's number.

(3) If default is made in complying with this section, the company commits an offence.

Division 2 – Directors and Officers

43. Directors – (1)(a) A trustee company incorporating a company must make available an officer of the trustee company, or a body corporate wholly owned by the trustee company, for appointment as a resident director of a company;

- (b) A person must not act or be appointed as a resident director of a company other than an officer of a trustee company, or a body corporate wholly owned by the trustee company, made available for appointment by the trustee company pursuant to subsection (1)(a);

- (c) The fees of a trustee company making available a resident director to a company must be paid to the trustee company which made the person available in such manner and at such times as to be agreed between the trustee company and the company and such fees are to be a charge upon the assets of the company ranking in priority next after the fees owing by the company to the Registrar.

(2) A company must have at least 1 director, who must be a resident director, and any casual vacancy in directors may, so far as the articles do not otherwise provide, be filled by a person appointed by the continuing director or directors or, if there be none, by the trustee company which is the holder of the company's Founder's Rights Certificate, or by the Registrar on a request by that trustee company.

(3) Subject to any contrary provisions in the company's articles, a director may be a body corporate and such body corporate may act by itself through its director(s) or through a nominee appointed in writing and may be appointed or act as a director of more than 1 other company.

(4) A resident director must not be subject to retirement but he or she may, upon agreement between the trustee company which makes available the officer or wholly owned subsidiary for appointment and the company of which the person is appointed a director, be replaced by another officer or wholly owned subsidiary of the trustee company at any time.

(5) A resident director may vote upon the resolution of the board of directors without disclosing his or her interest as director of any other company or body corporate incorporated in Samoa, but subject to the provisions of section 48.

(6) Notice received by a resident director of a company is not deemed notice to that company unless it is given to the resident director specifically as notice to that company.

(7) A director or resident director of a company:

- (a) must not disclose or use information he or she has obtained by reason of his or her office to any person or for any purpose except in accordance with his or her duty as a director of the company or so far as he or she may be compelled by law so to do; but
- (b) may disclose to an appropriate public officer in Samoa or otherwise use within Samoa information coming to his or her knowledge which he or she honestly believes suggests that a fraud is being or is likely to

be practised by the company or by any of its directors or upon the company or charity, but only to substantiate that honest belief.

(8) A person acting in contravention of the provisions of this Act relating to disclosure by a director or resident director commits an offence.

(9) The trustee company providing the resident director of a company may inform the Registrar, upon prior written notice to the company, that the trustee company no longer intends to provide the resident director of the company from a date not earlier than 1 month from the date of informing the Registrar and must inform the Registrar of the reason it so intends.

(10) Upon receipt of a notice from the trustee company under subsection (1)(a), the Registrar must immediately give notice to the company, at its last registered office, of the Registrar's intention to strike off the name of the company from the register pursuant to section 122 unless a resident director is appointed within 1 month from the date thereof.

44. Restrictions on naming Director – A person must not be named as a director or proposed director in the articles of a company, unless before the registration of the articles the person has, by himself, herself or by his or her agent authorised in writing for the purpose, signed and caused to be lodged with the Registrar a consent in writing to act as a director and satisfactory evidence of identity.

45. Qualification of Director – (1) A director who is by the articles of the company required to hold a specified qualification so to act must provide evidence of the qualification being met to the trustee company which provides the resident director.

(2) A resident director must not be required to hold any qualification despite anything contained in the articles.

(3) A director must vacate his or her office if he or she ceases at any time to hold his or her qualification and he or she is incapable of being re-appointed as director until he or she had regained his or her qualification.

(4) A person must not be appointed as a director unless and until the trustee company which provides the registered office has in its possession satisfactory evidence of identity in respect of that person.

46. Validity of acts – The act of a director or manager or secretary of a company is valid despite any defect that may be discovered in his or her appointment or qualification.

47. Power to restrain certain persons from managing companies – (1) The Registrar may issue direction that a person who, in Samoa or elsewhere:

- (a) has been convicted of an offence in connection with the establishment, administration or management of a body corporate or any trust;
- (b) has been convicted of any offence involving fraud or dishonesty or money laundering or in any way associated with terrorism;
- (c) is an undischarged bankrupt or insolvent,

be disqualified from acting as a director of a company, or as a director or nominee of a corporate director of a company, or as a manager of, or being in any way directly or indirectly concerned with, or taking part in the administration of, a company, including as a consultant or advisor of the company.

(2) A company must not appoint or retain or otherwise deal with a person disqualified under subsection (1) and a person so disqualified who contravenes that direction, without leave of the Court first had and obtained commits an offence.

48. Disclosure of interest in contracts, property, offices, etc-

(1) Subject to this section, a director of a company who is any way, whether directly or indirectly, interested in a contract or proposed contract with the company must, as soon as practicable after the relevant facts have come to his or her knowledge, declare the nature of his or her interest at a meeting of the directors of the company or cause to be circulated in writing to all the other directors particulars of his or her interest.

(2) The requirements of subsection (1) do not apply in any case where the interest of the director may properly be regarded as not being a material interest.

(3) For the purpose of this section, the trustee company providing a resident director is deemed to be interested in all contracts or proposed contracts with any other company or body corporate incorporated in Samoa to which such a director is provided and where the director so provided is the sole director a declaration noted in the minutes is deemed sufficient compliance with the provisions of subsection (1).

(4) Subject to any contrary provision in the articles of a company, a director of a company must not, for the purposes of this section, be deemed to be interested in or to have at any time been interested in, a contract or proposed contract, by reason that the contract or proposed contract:

- (a) has been or will be made with; or
- (b) is for the benefit of; or
- (c) is on behalf of,

a body corporate, which by virtue of the provisions of section 4 is deemed to be a related company of the company, and that he or she is also a director of that body corporate.

(5) For the purposes of subsection (1) a general notice given to the directors of a company by a director to the effect that he or she is to be regarded as interested in any contract which may, after the date of the notice, be made with a specified person is deemed to be a sufficient declaration of interest in relation to any contract so made, but no such notice is effective unless it is included in the records of the company generally available to other directors as soon as practicable after it is given.

(6) Where the articles of a company require every director of that company who holds any office or possesses any property where, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as director, he or she must be declared at a meeting of the directors of the company, or cause to be circulated in writing to the other directors, the fact and the nature, character and extent of the conflict, provided that the provisions of this subsection do not apply to a sole resident director unless the articles of the company otherwise provide;

(6A) A declaration under subsection (6) must be made at the first meeting of the directors held—

- (a) after he or she becomes a director; or
- (b) if already a director, after he or she commences to hold the office or to possess the property, as the case requires;

(6B) A declaration under subsection (6) must be recorded in the minutes of the meeting at which it was made.

(7) The holder of the Founder's Rights Certificate of a company may either generally or in any specific case by prior written notice to the director exempt any resident director from complying with the previous provisions of this section, if it reasonably believes that no loss or damage will result to the company from the non-disclosure thereby allowed.

(8) Where:

- (a) any contract is entered into in a contravention of the provisions of this section; and
- (b) any party to that contract cannot establish on the balance of probabilities that he or she did not have actual knowledge or suspect at the time of entering the contract that the contract was entered into by any other party in contravention of the provisions of this section,

the contract is voidable at the absolute discretion of the company as against that party and all of the profits earned or derived by that party from the contract is payable to the company together with such other compensation as a Court may think just in the circumstances.

49. Code for the establishment of liabilities of officers – (1)

An officer of a company must at all times act for a proper purpose and honestly in what he or she believes are the best interests of the company.

(2) An officer of a company must not make improper use of his or her position as an officer to gain, directly or indirectly, an advantage for himself, herself or for any other person or to cause detriment to the company.

(3) An officer of a company is obliged to use such diligence as might reasonably be expected of a person of his or her knowledge and experience in the performance of his or her duties as such an officer, having regard to the requirements and business activities of the company.

(4) Nothing in this section precludes:

- (a) the right of a company to impose, in its articles or by contract, obligations and duties on its officers in addition to the obligations and duties imposed in this section;
- (b) the right of the holder of the Founder's Rights Certificate of the company to ratify the conduct of the officers even though any such conduct may contravene this section or the memorandum or articles; and
- (c) a company entering into a contract of insurance or indemnity or any other similar contractual obligation with or for the benefit of any officer.

(5) Despite the obligations and duties of the officers of a company are owed to the company, the company and any other person affected by any breach of those duties may commence any

civil proceedings against the officer. Provided that, in the case of any proceedings commenced by any person other than the company:

- (a) the Court is satisfied that a strong *prima facie* case exists against the officer; and
- (b) the person commencing the proceedings pays into Court such amount determined by the Court as security for the costs and expenses of any other party to the proceedings; and
- (c) any net financial benefit derived from such proceedings is payable to the company.

(6) Where an officer of a company is a body corporate, that body corporate is deemed to have the knowledge of the persons who ultimately direct its actions as an officer of the company.

50. Limitation of liability of officers – (1) Despite any other provision of this Act, in a person's performance of any obligations, duties, services or other activities for or on behalf of a company, the person:

- (a) is not liable for any penalty under this Act other than where such penalty arises by reason of the wilful misconduct, wilful default or wilful neglect of the relevant person;
- (b) must not incur any tortious liability arising otherwise than by reason of the wilful misconduct, wilful default or wilful neglect of the relevant person, unless the articles of the company provide for such liability;
- (c) is not liable for any breach of trust or other equitable obligation other than where the relevant person had actual knowledge of and knowingly assisted in such breach, unless the articles of the company provide for such liability;
- (d) in the absence of wilful misconduct, wilful default or wilful neglect, must not incur any liability (whether tortious, contractual, equitable or otherwise) by reason only that the company incurs any debts or obligations or continues to carry on business at a time when the company is insolvent.

(2) For the purposes of subsection (1)(c), no inference is to be made as to the knowledge or knowing assistance of a relevant person by reason of any failure to make inquiries in relation to the activities of the company or the source of any of the funds or

contributions received by the company or by reason of upholding any obligation as to confidentiality provided by this Act.

(3) For the purposes of this section “relevant person” means:

- (a) a resident director; or
- (b) a resident secretary; or
- (c) a resident agent; or
- (d) a trustee company, a subsidiary of a trustee company and any officer thereof; or
- (e) a nominee or representative of any of the persons referred to in paragraph (a), (b), (c) or (d) hereof; or
- (f) any person acting on the instructions or under the authority (whether general or specific) of any of the persons referred to in paragraph (a), (b), (c) or (d) hereof.

51. Secretary and agents – (1) A company must appoint a secretary who may be a resident secretary, and more than 1 secretary may be appointed and if a resident secretary is appointed there may be additional secretaries that are not resident secretaries, and a company that does not appoint a resident secretary must appoint a resident agent.

(2) Secretaries, including resident secretaries, and a resident agent may be a body corporate.

(3) When requested in writing by a company to make available a resident secretary or a resident agent, the trustee company holding the Founder’s Rights Certificate of that company must either accept appointment as a resident secretary or resident agent, as the case may be, of that company or make available for appointment an officer of the trustee company or a wholly owned subsidiary thereof.

(4) A person must not act or be appointed as a resident secretary or a resident agent of a company other than a trustee company holding the Founder’s Rights Certificate of that company, or an officer of that trustee company, or a wholly owned subsidiary thereof.

(5) Subject to subsection (6), the resident secretary of a company or, in any case where no resident secretary is appointed, the secretary is responsible for seeing to compliance by the company with the requirements of this Act in relation to the lodging of all documents with the Registrar, the maintenance of the company’s records and dealing with the communications received by the company at its registered office.

(6) An officer and a wholly owned subsidiary of a trustee company appointed under subsection (3) may obtain the assistance

of the appointing trustee company or a barrister or a solicitor in the interpretation of documents and may by himself, herself or his or her agent to have access to such information as is required to make and complete the same and to furnish such information relating to the affairs of the company to the trustee company or a barrister or a solicitor for that purpose.

(7) A company must immediately pay any costs, charges and expenses incurred on its behalf by the resident secretary or the resident agent, as the case may be, in relation to any matters to be done under this Act.

(8) The remuneration of the resident secretary or the resident agent of a company is to be fixed by agreement between the company and the trustee company which is, or has provided the person who is, the resident secretary or the resident agent, and the remuneration is to be paid in such manner and at such time to be agreed between the trustee company and the company and such remuneration is to be a charge upon the assets of the company ranking in priority next after the fees owing by the company to the Registrar.

(9) A secretary and a resident agent of a company must be appointed by the directors of the company.

Division 3 – Registers

52. Registers of directors, secretaries and resident agents –

(1) A company must keep at its registered office in Samoa, a register of its directors, secretaries and resident agents.

(2) The register must contain with respect to each director, in the case of an individual, his or her present surname and any former surname and his or her present other names and any former other names, a means of identifying the individual issued by a governmental authority and his or her usual residential address, or if the case of a company, the company's full name, the address of its registered office and the names of those persons by whom it may act and, if any, the name of its representative in Samoa.

(3) The register must contain with respect to each secretary and resident agent, in the case of an individual, his or her present surname and any former surname and his or her present other names and any former other names and his or her usual residential address, or in the case of a company, the full name of the company, the address of its registered office and the names of its authorised nominees and representatives in Samoa, if any.

(4) The registers kept by a company must be open to inspection by any director, secretary and auditor, and the holder of the Founder's Rights Certificate, of the company without charge.

(5) A company must lodge with the Registrar:

- (a) within 1 month after incorporation, a return in the prescribed form containing in relation to its directors, secretaries and, if applicable, resident agent the particulars set out in subsections (2) and (3);
- (b) within 1 month after a person named in a return ceased to be a director, secretary, or resident agent of the company, a return in the prescribed form notifying the Registrar of the change and containing with respect to each person the particulars set out in subsections (2) and (3) and the date of cessation; and
- (c) within 1 month after a person becomes a director, secretary or resident agent of a company, a return in the prescribed form notifying the Registrar of that fact and containing the particulars set out in subsections (2) and (3) and the date of appointment.

(6) If default is made by a company in complying with any provision of this section, the company and every officer of the company who is knowingly in default commits an offence.

(7) A certificate of the Registrar stating that from a return lodged with the Registrar pursuant to this section it appears that at a time specified in the certificate a person was a director, secretary or resident agent of a specified company to which this subsection applies must, in all Courts and by all persons having power to take evidence of the facts stated in it and for the purposes of this Act, be received as *prima facie* evidence of the facts stated in it and for the purposes of this subsection a person who appears from any return so lodged to be a director, secretary or resident agent of a company is deemed to continue as such until by a subsequent return so lodged or by a notification of change in the prescribed form so lodged it appears that he or she has ceased to be such a director, secretary or resident agent.

53. Register of Founder's Rights Certificate – (1) A company must keep at its registered office in Samoa a register of the holder of its Founder's Rights Certificate and enter in it:

- (a) the name and addresses of the trustee company by which it is held; and
- (b) the date on which trustee company by which it is held was entered in the register; and

- (c) the date on which any trustee company by which it was held ceased to be the holder thereof; and
- (d) the identifying number of the certificate; and
- (e) the date of issue of the certificate.

(2) The Founder's Rights Certificate register is *prima facie* evidence of any matter inserted in it as required or authorised by this Act.

(3) A company must keep at its registered office in Samoa, in the register maintained under subsection (1), a copy of every Founder's Rights Certificate issued by it.

54. Default in compliance – If default is made by a company in complying with section 53, the company and every officer of the company who is knowingly in default commits an offence.

55. Branch Registers – (1) A company may cause to be kept in any place outside of Samoa a branch register of directors or secretaries.

(2) A branch register must be kept in the same manner in which the relevant principal register is, by this Act, required to be kept.

(3) A company which keeps a branch register outside of Samoa may discontinue the branch register and all entries in that register are to be transferred to another branch register kept by the company or to the principal register.

(4) The provisions of the law in force in a country where a branch register is kept govern the rights of its inspection.

56. Inspection and closing of Registers – (1) A company may, on giving not less than 21 days notice by advertisement in such manner as the articles provide or in default of such provision by public notice, close any or all registers for any time or times, but not so that any register is closed for more than 30 days in the aggregate in any year.

(2) The registers must be open to the inspection of any director or auditor of the company for the purposes of inspection of the particulars contained in them save that in respect of the Founder's Rights Certificate register only to verify the current holder of the Founder's Rights Certificate.

(3) A person must not inspect the particulars of any prior holder of the Founder's Rights Certificate without the consent in writing of that prior holder of the Founder's Rights Certificate, or of the Registrar first had and obtained.

(4) An inspection by a director or auditor under this section of the company is without charge.

(5) A person, other than the Registrar or a person named in subsection (2), may only inspect the register:

- (a) with the consent in writing of the company or the trustee company holding the Founder's Rights Certificate;
or
- (b) after paying an inspection fee to the relevant trustee company as the trustee company reasonably determines.

57. Power of Registrar to rectify Registers – (1) If, in relation to a company:

- (a) the name of any person is, without sufficient cause, entered in or omitted from a register; or
- (b) default is made or unnecessary delay takes place in entering in the register any fact which ought to be so entered, the person aggrieved may lodge an application with the Registrar for rectification of the relevant register, and the Registrar may refuse the application or may direct rectification of the register and payment by the company of any damages sustained by any party to the application and may direct the company or any party to bear the costs and expenses of, and incidental to, the application.

(2) On any application lodged under subsection (1) the Registrar may decide:

- (a) any question relating to the right of any person who is a party to the application to have his or her name entered in or removed from the relevant register; and
- (b) generally, any question necessary or expedient to decide for the rectification of the relevant register.

PART 5 ACCOUNTS AND AUDIT

Division 1 – Accounts

58. Accounts to be kept – (1) A company must keep accounting records to disclose:

- (a) the current financial position of the company; and

- (b) enable the directors to check that any accounts prepared by the company under this Part comply with the requirements of this Act; and
- (c) allow for the preparation of financial statements; and
- (d) details of the following—
 - (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; and
 - (ii) all sales and purchases and other transactions; and
 - (iii) the assets and liabilities of the relevant entity or arrangements.

(2) The accounts of a company must be kept at the registered office of the company and at such other place as the directors think fit and must at all times be open to inspection by any director and the holder of the Founder's Rights Certificate.

(3) The Registrar may in any particular case direct that the accounting and other records of a company be open to inspection by a registered company auditor acting for a director, but only upon an undertaking in writing given to the Registrar that information acquired by the auditor during his or her inspection must not be disclosed by him or her except to that director.

(4) A person who, being a director of a company, fails to take all reasonable steps to secure compliance by the company with the requirements of this Division commits an offence.

59. Accounts to be presented – (1) At least once in a calendar year next after the year of incorporation of the company, the directors must deliver to the holder of the Founder's Rights Certificate an audited balance sheet and profit and loss account of the company made up to a date not more than 12 months before the date of delivery.

(2) In the event that it is proposed by the directors to make a distribution from the company, an audited or unaudited balance sheet and profit and loss account made up to a date not earlier than 3 months before the date of the proposed resolution to make the distribution must be delivered to the holder of the Founder's Rights Certificate and no such resolution must be passed until 14 days after the delivery.

(3) A balance sheet or profit and loss account delivered in accordance with subsection (1) or (2) must be accompanied by all documents required by the articles to be attached to the balance sheet or profit and loss account.

60. Statement of accounts – The accounts of a company may be prepared either under any generally accepted accounting principles as may be directed by the holder of the Founder’s Rights Certificate, or as may be provided for in the articles or, in the absence of the direction or provision, as may be determined by the directors as appropriate to comply with section 58(1).

Division 2 – Audit

61. Auditor to be appointed – (1) The directors of a company must within 90 days of its incorporation, appoint a registered company auditor to be the auditor of that company and that auditor holds office until the expiration of the audit period expiring next after 18 months from the date of its incorporation.

(2) At the conclusion of his or her first term of office, the auditor, if willing and eligible, may be reappointed for a further 1 or 2 audit periods.

(3) A person must not be appointed to be, or to act as, the auditor of a company without his or her prior written consent.

(4) A company must, whenever it appoints an auditor, lodge with the Registrar within 30 days of the appointment a notice thereof in the prescribed form accompanied by the auditor’s written consent.

62. Appointment and removal of auditors – (1) Subject to section 61, a company must appoint a registered company auditor to be the auditor of the company for such period as the company may determine upon the previous auditor ceasing to hold office.

(2) A company may upon not less than 28 days written notice to the auditor, remove that auditor from office. Where an auditor is removed, the company must no later than upon the day of removal appoint a registered company auditor to take the place of the auditor so removed.

63. Auditor ceasing to be registered – (1) Unless the Registrar otherwise directs, or the directors otherwise resolve, if an auditor ceases to be a registered company auditor he or she continues to hold office as auditor of a company until completion of the audit work for the audit period during which he or she ceased to be a registered company auditor.

(2) Where an auditor ceases to be registered and does not continue in office as auditor of the company pursuant to subsection (1), the company must immediately appoint another registered

company auditor and that other auditor is the auditor of the company for the purposes of this Act for the period then current and, subject to making proper appraisal and review of the work of the auditor ceasing to be registered, such other auditor is entitled to use and rely upon the work of the first-mentioned auditor done up to the time of the appointment of the new auditor.

(3) It is an implied term of every contract between a company and its auditor that the auditor must make available to another auditor taking office either in lieu of or in addition to the first-mentioned auditor upon written request all working papers relating to be the affairs of the company made and kept by the first-mentioned auditor during his or her tenure of office.

(4) An auditor appointed to or in place of an auditor ceasing to hold office as a registered company auditor holds office during the period for which the auditor so ceasing would have held office had he or she not so ceased.

64. Partners of auditors – Where a registered company auditor is a member of a partnership carrying on the practice of accountants and auditors and 1 or more member of that partnership is or are the auditors of a company, another member of such partnership being a registered company auditor may, if the directors so resolve, be substituted as auditor of the company with the written consent of the substitute auditor.

65. Remuneration of auditors – The fees and expenses of an auditor of a company may be fixed by the directors unless the auditor requires such fees and expenses to be fixed by the holder of the Founder's Rights Certificate.

66. Auditor may attend meetings – An auditor of a company may attend and address all meetings of directors the company at which the accounts he or she has audited fall to be considered.

67. Auditor to audit – (1) An auditor of a company must audit the company in each audit period.

(2) An auditor must report to the directors and holder of the Founder's Rights Certificate as to his or her audit, balance sheet and profit and loss account.

(3) An auditor must give further reports and information as are required by regulations.

(4) The Registrar may require the holder of the Founder's Rights Certificate of a company to lodge with the Registrar's office

a copy of any report or further report or information provided by the auditor in respect of that company.

68. Information and explanations required by an auditor –

An auditor may obtain information and explanations in relation to the affairs of the company of which he or she is auditor and of any other body corporate which by virtue of section 4(5) is deemed to be related to that company as he or she reasonably requires to complete the audit, and the directors of the company must take all proper steps to ensure that the auditor is able to obtain such information and explanations and to have access to such books and records as the auditor requires for the audit.

69. Powers, duties and obligations of auditors – The powers, duties and obligations of auditors provided by this Act are in addition to any powers, duties and obligations specified in the articles of the company of which he or she is auditor and all auditors must be furnished with a copy of the articles.

PART 6 WINDING UP

Division 1 – Preliminary

70. Modes of winding-up – (1) A company may be wound up either:

- (a) compulsorily; or
- (b) voluntarily.

(2) Unless inconsistent with the context or subject matter, the provisions of this Act with respect to winding-up, apply to the winding-up of a company in either of those modes.

71. Government bound by winding-up rules – The provisions of this Part relating to the remedies against the property of a company, the priorities of debts and the effect of an arrangement with creditors binds the Government in all its capacities.

72. Certificate as to winding-up – (1) The Registrar upon application lodged by any person in the prescribed form accompanied by the prescribed fee, must issue a certificate stating whether at the date of the certificate a company is being wound-up, or a petition has been presented for the winding-up of the company and is pending.

(2) Notice of the issue and effect of the certificate may be given by post if the applicant for the certificate so requests and pays the cost thereof.

(3) Neither the Government nor the Registrar nor any officer of the Government is liable by reason of any error, mistake, inaccuracy or delay in or in the giving of the certificate or notice by whatsoever cause or means arising, unless such error, mistake, inaccuracy or delay was wilful and fraudulent.

73. Effects of winding-up – (1) A company must, from the commencement of the winding-up, cease to carry on business, except if, in the opinion of the liquidator:

- (a) it is required for the beneficial winding-up of the company; or
- (b) subject to section 74, it is required for the performance of any contract which the liquidator may not disclaim pursuant to section 119, but the corporate state and corporate powers of the company, despite anything to the contrary in the articles, continues until it is dissolved.

(2) On the commencement of the winding-up of a company, the powers of the directors cease except if the liquidator of the company approves the continuance of the powers.

(3) A transfer of the Founder's Rights Certificate, not being a transfer made to or with the sanction of the liquidator, made after the commencement of the winding-up is void.

74. Avoidance of disposition of property – A disposition of the property of a company, including things in action, made after the commencement of the winding-up, unless the Court otherwise orders, is void.

75. Costs of winding-up – (1) All proper costs, charges and expenses of and incidental to the winding-up of a company, including the remuneration of the liquidator, is payable out of the assets of the company in priority to all other claims of whatsoever nature.

(2) The Court may, in the event of the assets being insufficient to satisfy the costs, charges and expenses, make an order as to the payment out of the assets of the costs, charges and expenses in the order of priority as the Court thinks just.

76. Custody and vesting of company's property – On the commencement of any winding-up or when a provisional liquidator has been appointed, the liquidator or provisional liquidator must take into his or her custody or under his or her control all the property and things in action to which the company is or appears to be entitled and, on application by the liquidator to the Court all or any part of the property of the company of whatsoever description belonging to the company or held by trustees on its behalf may be vested in the liquidator by his or her official name.

77. Delivery of assets – The Court may require any director, secretary, trustee company, receiver, banker, agent or officer of a company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator immediately or within such time as the Court directs any money, property, books and papers in his or her hands to which the company is *prima facie* entitled.

78. Avoidance of certain transactions – Any attachment, sequestration, distress, or execution put in force against the estate or effects of a company after the commencement of its winding-up, unless the Court otherwise orders, is void.

79. Pending proceedings – After the commencement of the winding-up, no action or proceeding is to be proceeded with or commenced nor is any judgment to be executed against a company except by leave of the Court, and subject to such terms as the Court may impose.

80. Power to stay winding-up – (1) At any time after the commencement of a winding-up the Court may, on the application of any , order that the winding-up be stayed, either altogether or for a limited time.

(2) The order staying or refusing to stay the winding-up is to be made on terms as the Court sees fit.

(3) A copy of an order under this section must be lodged by the liquidator with the Registrar immediately.

81. Delegation to liquidator of Courts power – Unless rules of court otherwise provide, the Court may order that the powers and duties imposed on the Court by this Part in respect of:

- (a) the holding and conducting of meetings to ascertain the wishes of creditors;
- (b) the collecting and applying of the assets;

- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidators;
- (d) the fixing of a time within which debts and claims must be proved,—

may be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court.

82. Distribution of assets – Subject to section 84 and this Act as to preferential payments, the property of a company must, on its winding-up, be applied in satisfaction of its liabilities equally, and subject to that application must, unless the articles otherwise provide, be distributed to charity as the liquidator determines.

83. Admission of claims to proof – (1) A claim must not be admitted to proof in a winding-up unless:

- (a) a relevant judgment of a Court outside Samoa could be registered in any Court of Samoa and enforced in Samoa; or
- (b) the claim would be enforceable by proceedings in a Court of Samoa.

(2) Where the identity or address of any creditor is not known to him or her, the liquidator must pay any money due to the creditor to the Government.

84. Proof and ranking of claims – (1) In the winding-up of an insolvent company, the same rules prevail and are to be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of the annuities and future and contingent liabilities as are in force or provided for in respect of the winding up of a body corporate incorporated under the International Companies Act 1988 and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the international company may come in under the winding-up and make such claims against the company as they respectively are entitled to by virtue of this section.

(2) Regulations may be made by the Head of State to provide for the proof of claims in a winding up of a company but in the absence of such regulations the procedure to be followed is that which is for the time being provided for the proof of claims in the winding up of a corporate body incorporated under the International Companies Act 1988.

85. Claims of creditors and distribution of assets – (1)

Subject to subsection (2), the Court or, in the case of a voluntary winding-up, the Registrar, may fix a date on or before which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.

(2) The liquidator or, in a voluntary winding up the Registrar, as the case may be, may extend the date fixed pursuant to subsection (1) and fix a new date.

(3) All net assets after payment of all liabilities of a company, including the costs, charges and expenses of the winding-up, must be distributed by the liquidator amongst the charities nominated by the holder of the Founder's Rights Certificate; but, in the event of a dispute as to the charities entitled to the assets, the liquidator, after receiving notice of the dispute, must refer the dispute to the Court, and is to be discharged by payment in accordance with the order of the Court.

(4) If no notice of dispute as to the charities entitled to a distribution of the net assets or any part thereof is received by the liquidator prior to making such distribution, whether interim or final, the liquidator is discharged from any liability in respect of the amount so distributed but without prejudice to the rights (if any) of a charity to recover the same from the charity receiving the distribution.

Division 2 – Compulsory Winding-up

86. Petition for winding-up – (1) A company whether or not it is being wound-up voluntarily, may be wound up compulsorily by order of the Court.

(2) The Court may order the winding-up of a company upon the petition of any 1 or more of the following:

- (a) the company;
- (b) a creditor including a contingent or prospective creditor of the company;
- (c) the liquidator of the company;
- (d) the Attorney-General;
- (e) the Authority.

(3) A petition must be filed in the Court in duplicate and the petitioner must serve a copy of the petition on the company named in the petition.

(4) The Registrar of the Court, upon a petition being filed, must immediately deliver the duplicate copy of the petition to the Registrar.

(5) Notice of any order made on or in respect of a petition must immediately be served by the petitioner on the Registrar and if applicable, on the liquidator named in the order and on the company named in it.

(6) Regulations may be made by the Head of State prescribing practice and procedure in Court applications or the grounds upon which a petition may be presented by any or all of the persons referred to in subsection (2), or the time within which petitions may be presented on any or more grounds and specifying the circumstances in which a winding-up order may be made.

87. Circumstances in which a company may be wound up compulsorily – (1) The Court may order that a company be wound up if:

- (a) the company has by resolution of its directors resolved that it be wound up under the order of the Court;
- (b) the company is unable to pay its debts;
- (c) the directors have acted in the affairs of the company in their own interest rather than in the interests of the company or in any other manner whatsoever which appears to be unfair or unjust to charity;
- (d) the Court is of the opinion that it is just and equitable that the company should be wound up; or
- (e) on the petition of the Authority it appears that—
 - (i) the company has persistently been in breach of this Act;
 - (ii) the company has failed to pay any penalty or fee which under this Act it is liable to pay;
 - (iii) the company has failed to pay the prescribed renewal fee within a period of 60 days after the same became due and payable;
 - (iv) a director or officer of the company has failed to pay any penalty imposed on him or her under this Act;
 - (v) the company has failed to make good a default within 60 days after service on it of a notice under this Act requiring it to do so; or
 - (vi) the company has been ordered by the Authority to cease carrying on business or any part of its business, and has failed to do so.

(2) A company is deemed unable to pay its debts if:

- (a) a creditor by assignment or otherwise to whom the company is immediately indebted in a sum exceeding 25% of its contributions has served on the company by leaving at its registered office in Samoa a demand under his or her hand or under the hand of his or her lawfully authorised agent requiring the company to pay the sum so due and the company has for 30 days afterwards neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) execution or other process issued on a judgment, decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) it is proved to the satisfaction of the Court that the company is unlikely to be able to pay its debts; and in determining whether a company is unlikely to be able to pay its debts the Court must take into account the contingent and prospective liabilities of the company.

(3) No debt which cannot be admitted in a winding-up may found a petition on the ground that the company is unable to pay its debts.

(4) If, on the hearing of a petition to wind-up a company, it is reported that the assets and affairs of the company are such that the making of a winding up order would not be appropriate, the Court may instead order that the name of the company be struck off the register and the company must then be dissolved.

(5) Within 7 days of an order made under this subsection, sealed copies of the order must be lodged by the petitioner with the Registrar and served upon the company at its registered office.

88. Commencement of compulsory winding-up – (1) Where before an order is made for the compulsory winding-up of a company a voluntary winding-up of the company has commenced the compulsory winding-up of the company is deemed to have commenced when the voluntary winding-up commenced.

(2) In any other case the compulsory winding-up of a company is deemed to have commenced:

- (a) where a provisional liquidator has been appointed and an order for the company to be wound-up is

- subsequently made, at the time when the appointment is made; and
- (b) where no provisional liquidator has been appointed, at the time when the order is made for the company to be wound-up.

89. Payment of costs – Upon a winding-up order being made in respect of a company, the liquidator must, unless the Court otherwise orders, reimburse the petitioner out of the assets of the company, the reasonable costs incurred by the petitioner in the proceedings for winding-up.

90. Costs relating to winding up – Rules may be made by the Registrar under this Act to provide for the costs, fees and expenses of and incidental to proceedings under a compulsory winding-up, including the fees and remuneration of a liquidator; but in the absence of such rules, the fees, costs and expenses payable on the winding-up of a body corporate incorporated under the International Companies Act 1988 must be paid subject to the overall discretion of the Court to increase or decrease any such fees, costs or expenses.

91. Copy of order to be lodged – (1) The petitioner, within 7 days after the making of a winding-up order against a company, must lodge a copy of the order with the Registrar and, other than where the petitioner is the Authority, pay the prescribed fee, and must, within the 7 days cause copies of the order to be served upon the company and upon the liquidator appointed by the Court and within 14 days after that, further deliver to the liquidator and the Registrar a certified statement that the requirements of this section have been complied with.

(2) If default is made in complying with subsection (1), the petitioner commits an offence.

92. Appointment of liquidator – (1) The Court upon making an order of the winding-up of a company must, subject to the provisions of this Act, appoint a liquidator of the company and the Court may require him or her to give such security as it thinks fit and that liquidator is, unless the Court for special reason orders otherwise, an official liquidator.

(2) The Court may by order appoint a liquidator provisionally at any time after the presentation of a winding-up order and the provisional liquidator so appointed may exercise all the functions and powers of a liquidator subject to such limitations and

restrictions as may be provided by the order appointing him or her or any subsequent order of the Court and any reference in this Act to a liquidator includes a provisional liquidator.

93. Validation of proceedings in voluntary winding-up –

Unless the Court on proof of fraud or mistake, thinks fit otherwise to direct, all things done and all proceedings taken in any voluntary winding-up preceding the making of a winding-up order is deemed to have been validly done or taken.

94. Statement of affairs – (1) Upon a winding-up order being made in respect of a company there is to be made out and in the prescribed form verified by affidavit and submitted to the liquidator a statement as to the affairs of the company as at the date of the winding-up order showing:

- (a) the particulars of its assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given;
- (e) such further information as is prescribed or as the liquidator requires.

(2) A statement as to the affairs of a company must be submitted by 1 or more of the persons who, at the date of the winding-up order, were directors of the company, or by any of the following persons as the liquidator, subject to the direction of the Registrar, requires, that is to say persons:

- (a) who are or have been officers of the company;
- (b) who have taken part in the formation of the company at any time within 1 year before the date of the winding-up order;
- (c) who are or have been within 1 year before the date of the winding up order in the employment of the company;
or
- (d) where a voluntarily winding-up preceded the order, who were the liquidator in the winding-up.

(3) The statement must be submitted within 30 days after the date of the winding-up order or within such extended time as the Court or the liquidator for good reason allows, and the liquidator within 7 days after its receipt must cause a copy of the statement to be lodged with the Registrar.

(4) A person making or concurring in making a statement as to the affairs of a company required by this section subject to any regulations, may be paid by the liquidator out of the assets of the

company such costs and expenses incurred in and about the preparation and making of the statement as the liquidator considers reasonable.

(5) A person who, without reasonable excuse, makes default in complying with the requirements of this section commits an offence.

95. Report of liquidator – (1) The liquidator in a compulsory winding-up of a company, as soon as practicable after receipt of the statement of affairs, must submit a preliminary report to the Court:

- (a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities; and
- (b) if the company has failed, as to the cause of the failure; and
- (c) whether in his or her opinion further enquiry is desirable as to any matter relating to the failure of the company or the conduct of the business thereof.

(2) The liquidator if he or she thinks fit, may make further reports stating the manner in which a company was formed and whether in his or her opinion any fraud has been committed or any material fact has been concealed by any person in its promotion or formation or by any officer in relation to the company since its formation and specifying any other matter which in his or her opinion it is desirable to bring to the notice of the Court.

Division 3 – Voluntary Winding-up

96. Circumstances in which a company may be wound-up voluntarily – (1) A company which is able to pay or provide for the payment of its debts in full or if not in full to the satisfaction of its creditors, may be wound-up voluntarily if the company has by resolution of its directors resolved that it be wound-up voluntarily and has lodged notice of resolution with the Registrar.

(2) Upon the Registrar being satisfied that the notice of the resolution for the winding-up of the company has been lodged with him or her, the Registrar must appoint an official liquidator to be liquidator of the company before the winding-up commences.

(3) The liquidator or the Registrar may give such notices and make such enquiries as they see fit to ascertain the identity of the creditors of the company, and the costs and expenses of so doing must be paid out of the assets of the company.

97. Declaration of solvency – (1) Where it is proposed to wind-up a company voluntarily the directors of the company or, in the

case of a company having more than 2 directors, a majority of the directors before the date on which the resolution for the winding-up of the company was passed must make and lodge with the Registrar a written declaration to the effect that they have made an inquiry into the affairs of the company and have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the date of the making of the declaration.

(2) A declaration referred to in subsection (1) must attach a statement of the company's affairs in the prescribed form:

(a) the assets of the company and the total amount expected to be realised from it; and

(b) the liabilities of the company; and

(c) the estimated expenses of winding-up,

made up to the latest practical date before the making of the declaration.

(3) A declaration under subsection (2) has no effect for the purposes of this Act unless it is:

(a) made within 5 weeks immediately preceding the passing of the resolution for voluntary winding-up; and

(b) lodged with the Registrar no later than the date on which the resolution for the winding-up of the company is passed.

(4) A director who makes a declaration in relation to a company under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period stated in the declaration commits an offence.

(5) If a company is wound up pursuant to a resolution for voluntary winding-up passed within a period of 5 weeks after the making of the declaration but its debts are not paid or provided for in full within the period stated in the declaration, it is presumed until the contrary is shown that the director did not have reasonable grounds for his or her opinion.

98. Conversion of voluntary winding-up to compulsory winding up – Where a company is being wound-up voluntarily:

(a) if the liquidator is at any time of the opinion that the company will not be able to pay or provide for the payment of its debts in full or, if not in full, to the satisfaction of all the creditors, he or she must immediately give notice to the creditors of that opinion; and

(b) upon the notice being given, the winding-up must continue as a compulsory winding-up and the

liquidator must immediately lodge with the Court a notice to that effect in the prescribed form and the Court is then deemed to have ordered the winding-up and to have appointed the liquidator.

99. Payment of claims by liquidator of company in voluntary liquidation – (1) Within 120 days after the commencement of the voluntary winding-up of a company, or within such further time as the Registrar may allow, the liquidator must make such enquiries as to claims and give such public notices or otherwise as regulations may require and as the liquidator thinks fit, before the liquidator, subject to the retention of a fund sufficient to meet the costs, charges and expenses and future costs, charges and expenses of the liquidation, pays such claims in the liquidation of which he or she has actual notice and which he or she has admitted or which are admissible and, without regard to other claims of which he or she has no notice or which are not admissible, must immediately distribute the whole of the net assets to charity.

(2) Upon making the payments referred to in subsection (1), the liquidator must file with the Registrar a certificate to that effect before the company named in the certificate is dissolved.

(3) Regulations may be made for the making and determination of claims of creditors either not admitted by the liquidator or barred by the dissolution of a company prior to their submission:

PROVIDED THAT the regulations must not permit recovery from a charity unless proceedings to enforce recovery are commenced within a period of 3 months from the date of the liquidator's certificate.

Division 4 – Liquidators

100. Vacancy in office of liquidator – If in the course of a winding-up a vacancy occurs by death, resignation or otherwise in the office of a liquidator, in the case of a compulsory winding-up the Court must fill the vacancy by the appointment of a liquidator, provided that the liquidator so appointed, unless the Court for special reasons otherwise orders, is an official liquidator, and in the case of a voluntary winding-up the vacant office must be filled by the Registrar in like manner.

101. Replacement of liquidator – Subject to rules of court, the Court may remove a liquidator and appoint another liquidator in his or her place.

102. Validity of liquidators acts – (1) The acts of a liquidator are valid despite any defects that may be discovered in his or her appointment or qualification.

(2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator, despite any defect or irregularity affecting the validity of the winding-up or appointment of the liquidator, is valid in favour of a person taking the property *bona fide* and without notice of the defect or irregularity.

(3) A person making or permitting any disposition of property to any liquidator is protected and indemnified in so doing, despite any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator not then known to such person.

(4) In this section, "disposition of property" includes a payment of money.

103. General provisions as to liquidators – (1) A person appointed to be the liquidator of a company may resign.

(2) In the event of a company or creditor seeking the removal of a liquidator and such removal being opposed by the liquidator, the question must be referred to the Court and upon cause being shown the Court may order that the liquidator be removed before the liquidator ceases to be the liquidator of the company.

(3) Upon discovery of any defect in the appointment or qualifications of a liquidator, the Registrar may by public notice validate the appointment before the liquidator is deemed for all purposes to have been validly appointed on and from the date as may be specified in the notice.

104. Powers of liquidators – (1) A liquidator may, subject to regulations made under this Act and, in a compulsory winding-up of a company, subject to any order or rule of the Court:

- (a) carry on the business of the company so far as is necessary for the beneficial winding-up thereof;
- (b) subject to the provisions of this Act, pay any class of creditors in full;
- (c) make any compromise or arrangement with creditors or persons claiming to be creditors or having, or alleging themselves to have, any claim present or future, certain or contingent, ascertained or sounding only in damages, against the company or whereby the company may be rendered liable;

- (d) compromise any debts and liabilities capable of resulting in debts and any claims present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company any other person, and all questions in any way relating to or affecting the assets or the winding-up of the company, on such terms as are agreed and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof;
- (e) bring or defend any action or other legal proceeding in the name and on behalf of the company;
- (f) appoint a barrister, a solicitor, a trustee company, an accountant or other expert to assist him or her in his or her duties;
- (g) sell the real and personal property and things in action of the company by public auction, public tender or private contract with power to transfer the whole to any person or company or to sell the same in parcels;
- (h) do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose use when necessary the seal;
- (i) prove rank and claim in the insolvency, sequestration bankruptcy or liquidation of any debtor for any balance against his or her estate, and receive dividends in the insolvency, sequestration bankruptcy or liquidation in respect of that balance as a separate debt due from the insolvency, bankrupt or company in liquidation and rateably with other separate creditors;
- (j) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;
- (k) raise on the security of the assets of the company any money required;
- (l) take out or cause to be taken out, probate or letters of administration of the estate of any deceased debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor or his or her estate which cannot be

conveniently done in the name of the company, and in all such cases the money due is for the purposes of enabling the liquidator to take out or cause to be taken out the probate or letters of administration or recover the money, deemed due to the liquidator;

- (m) appoint an agent or expert to do any business or carry out any work or give any recommendation or advice which the liquidator is unable or unqualified to do himself or herself and to pay the proper charges of such agents and experts for the doing of such work and to pay the proper expenses incurred in and incidental to the doing of such work; and
- (n) do all such things as are necessary or convenient and reasonable for winding-up the affairs of the company, paying its debts and distributing its net assets to charity.

(2) If a creditor of a company contends that the liquidator should do or refrain from doing any of the acts under subsection (1) or is aggrieved by any act or decision of the liquidator, the person may submit to the Registrar his or her contention setting forth the grounds for the contention and if the Registrar is of the opinion that the contention is one which might be reasonably sustained, whether the Registrar would himself or herself sustain it or not, he or she must inform the liquidator before the contention is referred to the Court and the liquidator must act in accordance with an order made by the Court.

(3) Unless the Court orders otherwise, the liquidator is entitled to his or her costs and expenses of the proceedings out of the assets of the company and, if prior to the contention being referred to the Court, the liquidator certifies to the Court that there is a doubt whether the assets of the company will be sufficient to satisfy the costs after providing for all other then known expenses and out goings, the Court must not proceed with the hearing until full security for the costs and expenses are provided by the applicant and the security to the extent to which the liquidator is unable to satisfy such costs and expenses from the assets of the company, must answer for the same and in any event must answer for the same in the first instance.

(4) In addition to subsection (3), the Court may order the applicant to pay to the company the whole or a part of the liquidator's costs and expenses as it thinks fit, and may order the liquidator or the company to pay the whole or part of the applicant's costs or expenses as it thinks fit.

105. Exercise and control of liquidators power – (1)

Subject to the provisions of this Act, the liquidator in the administration and distribution of the assets of a company must have regard to any directions given by the creditors or the holder of the Founder's Rights Certificate at any meeting or otherwise in accordance with this Act.

(2) The liquidator may summon a meeting of the creditors and the holder of the Founder's Rights Certificate for the purpose of ascertaining their wishes and at such times as the holder of the Founder's Rights Certificate directs in writing or whenever requested in writing to do so by not less than one-tenth in value of the creditors and all meetings must be summoned and held in accordance with regulations.

(3) Subject to this Act, the liquidator must use his or her own discretion in the management of the affairs and property of a company, in the payment of its debts and the distribution of its net assets.

106. Payment by liquidator into bank – (1)

A liquidator must pay the monies received by him or her into a bank account operated by him or her for the purposes of his or her activities as liquidator of the company, and regulations may be issued prescribing banks approved for this purpose and the manner and terms under which such bank account is to be operated.

(2) In this section, "bank account" means an account in the name of the liquidator or in the name of the company in liquidation or in such other name as the Registrar directs, at such bank as is approved by the Registrar for the purpose of this section.

(3) A pre-existing bank account of the company may be operated by the liquidator and qualify as the bank account for the purposes of subsection (1) provided the designation of the account is changed to reflect that the company is in liquidation.

107. Committees of inspection –

Regulations may be made by the Head of State relating to the appointment, constitutions, powers, duties, remuneration and removal of committees of inspection and for the appointment, the removal and the substitution of the members thereof.

108. Sale of property by liquidator other than for cash

– (1) In any voluntary winding-up of a company the liquidator may sell, transfer or dispose of the business or property of the company

in whole or in part in consideration and the liquidator may transfer by way of distribution, some or all of such property:

PROVIDED, however, that notice of the liquidator's intention in that behalf must be given by him or her to such of the creditors of the company whose identities are known to him or her and, if within 21 days from the giving of such notice 25% of those to whom notice has been given dissent from the course proposed, the liquidator must either abstain from carrying out the course proposed or purchase the interest of the dissenters at a price to be determined by agreement or by the Court.

(2) In entering into any contract for the sale of the whole or part of the business or property of the company in return for the transfer of the property, the liquidator may make the non-dissent of the 25% of creditors a condition precedent or a condition subsequent to the contract and in the absence of the expression of such a condition or event or it being doubtful whether such a condition is precedent or subsequent, a condition precedent must be imputed into the contract.

109. Liquidator's book – A liquidator must keep proper books in which he or she makes entries of minutes of proceedings at meetings and of resolutions by creditors and of such other matters as may, with approval of the Registrar, personally or by his or her agent inspect such books.

110. Liquidator's return – Regulations may be made by the Head of State prescribing what returns, accounts, reports and information are to be lodged with the Registrar by a liquidator and providing for the costs and fees of and incidental to the same to be paid or provided for.

111. Invoices, etc, of company in liquidation – (1) Where a company is being wound up, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the same or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, must have the word "in liquidation" added after the name of the company where it first appears in the document.

(2) If default is made by a company in complying with this section, the company and every officer and liquidator of the company and every receiver or manager who knowingly and wilfully authorises or permits the default commits an offence.

112. Books of liquidator and company – (1) Where a company is being wound up or has been wound up, all books and papers of the company and of the liquidator that are relevant to the affairs of the company at or subsequent to the commencement of the winding-up of the company is *prima facie* evidence of the truth of all matters purporting to be recorded in them.

(2) Where a company has been wound up, the liquidator must return the books and papers to the resident secretary or, if none, the resident agent of that company who must ensure that those books and papers are retained by a trustee company for a period of 6 years from the commencement of the winding-up. After the expiration of the 6 years the books and papers may be destroyed.

(3) The Registrar may cause any additional records or registers to be destroyed after the expiration of 6 years from the commencement of the winding-up.

(4) No responsibility rests on the liquidator of a company or the Registrar by reason of any book or paper of the company being mislaid or not being forthcoming to a person claiming to be interested in it.

113. Investment by liquidator – Whenever the cash balance standing to the credit of a company in liquidation is in excess of the amount which in the opinion of the liquidator is required for the time being to answer the demands in respect of the company, the liquidator may invest the sum or any part thereof in any investment approved in writing by the Authority.

114. Liquidator's expenses – (1) Unless expressly directed so to do by the Court, a liquidator is not liable to incur any expense in relation to the winding-up of a company unless there are sufficient available assets to meet such expense.

(2) The Court on the application of a creditor, may direct a liquidator to incur a particular expense on condition that the creditor indemnifies the liquidator in respect of the recovery of the amount expended and gives security to secure the amount of the indemnity in a form acceptable to the liquidator or Court.

115. Dissolution – (1) As soon as the affairs of a company are fully wound up, the liquidator must prepare an account showing how the winding-up has been conducted and the property of the company has been disposed of and lodge the same with the Registrar, and, unless the Registrar otherwise orders, must send a copy of the account to the holder of the Founder's Rights Certificate of the company and, where the creditors of the company have not been paid in full or had their debts compromised, also to each creditor of whose name and address he or she is aware and must lodge with the Registrar, and in the case of a compulsory winding-up also file in the Court, a copy of the account together with a statement of the date upon which it was dispatched.

(2) On the expiration of 3 months after the lodging of an account under subsection (1) with the Registrar, the company is dissolved.

(3) Despite subsection (2), the Registrar or, in the case of compulsory winding-up, the Court, on application by the liquidator, or by any other person who appears to the Registrar or the Court, as the case may be, to be interested or, in the case of a compulsory winding-up, by the Court, may make an order or direction deferring the date at which the dissolution of the company is to take effect for such time as the Registrar or the Court, as the case may be, thinks fit but not exceeding 12 months and, in special circumstances, may extend the period upon further application for further periods of not more than 6 months.

(4) Except where the application is approved by the Registrar, the person on whose application an extension is granted under subsection (3) within 14 days after the granting of the extension, must lodge with the Registrar, a copy of the direction of the Registrar or order of the Court, which must set forth the name of the applicant and of the company and the date upon which the extension was granted and the period for which it was granted and must pay the prescribed fee and, if the applicant is not the liquidator, must send a copy of the application to the liquidator and in default of this the extension ceases and the company is immediately dissolved upon the date on which it would have been dissolved if the order or direction had not been made.

(5) Where an extension is granted in relation to the dissolution of a company upon the application of the Registrar, he or she must immediately note the order of the Court upon his or her records relating to the company and must send a copy of the extension to the liquidator.

(6) Upon the dissolution of a company the liquidator, unless the Court upon the application of any interested person or of its own motion otherwise orders prior to the dissolution, is released from all claims by the contributories, the creditors and the company.

116. Accountability of liquidator – (1) The Court, if it sees fit, may cause a report to be made on any accounts of the liquidator by a registered company auditor appointed by the Court for that purpose and pursuant to such report may issue a summons requiring the liquidator to appear before it and upon the hearing of such summons may make such order or give such directions as it thinks fit, including an order for the liquidator to make good any loss suffered by a company resulting from his or her knowing and wilful misconduct, knowing and wilful default or knowing and wilful neglect.

(2) When the liquidator has realised all the property of a company or so much thereof as can in his or her opinion be realised without needlessly protracting the liquidation or incurring expense without sufficient warrant, and has distributed a final dividend, if any, to charity he or she may apply to the Court:

- (a) for an order that he or she be released; or
- (b) for an order that he or she be released and that the company be dissolved.

(3) Unless the memorandum of the company, or any valid notice served upon the company, specifies a charity or charities to receive the final dividend referred to in subsection (2), a dividend must be payable to a charity or charities as the liquidator may select.

(4) When the liquidator has resigned or been removed from his or her office he or she may apply to the Court for an order that he or she has been released.

(5) Upon an application by a liquidator for an order that he or she be released, the Court in granting the application may impose such terms and conditions as it thinks fit; and any such order may be revoked on proof that it was obtained by fraud.

(6) The liability of a liquidator, except for liability for knowing and wilful misconduct, knowing and wilful default and knowing and wilful neglect, is discharged upon the issue of the order by the Court releasing him or her as liquidator.

(7) Upon being released, the liquidator ceases to hold office.

(8) Where a liquidator is released under the provisions of this section, a copy of the order releasing the liquidator must, within 10 days after the making thereof, be lodged by the liquidator with the Registrar.

Division 6 – Effect on other transactions

117. Voidable transactions – (1) A conveyance assignment or transfer of property, or charge made on a conveyance assignment or transfer of property, or every payment made and an obligation incurred, by a company, whose liabilities exceed the value of its assets, after taking account of any contingent and prospective liabilities, in favour of a creditor, or of any person in trust for any creditor or in favour of a connected person or a related company or in favour of a person or company in trust for the connected person or related company, where the effect is to give the creditor or the connected person or related company, a preference, priority or advantage over other creditors, is, if the winding-up of the company commences within 6 months assignment after the date of the conveyance, transfer, charge, payment or obligation incurred by the company, void against the liquidator unless made at the time of, and for, the transfer, assignment, charge, payment or obligation incurred.

(2) A floating charge on the property of a company created within 12 months before the commencement of the winding-up is, unless it is proved that immediately after the creation of the charge, the value of the assets of the company exceeded the amount of its liabilities, taking account of contingent and prospective liabilities, invalid, except to the amount of any money actually advanced or paid or the actual price or value of goods sold or supplied to the company at the time of, or subsequently to the creation of, and in consideration for, the charge.

118. Sales other than at proper value – (1) Where any property, business or undertaking has been acquired by a company within a period of 1 year before the commencement of the winding-up of the company from a person or company who at the time of the acquisition was a connected person or a related company, the liquidator may recover from the person or the company from which the property, business or undertaking was acquired any amount by which the consideration paid by the company for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition.

(2) Where any property, business or undertaking has been sold by a company to a connected person or related company within a period of 1 year before the commencement of the winding-up of the company, the liquidator may recover from the person or company to

which the property, business or undertaking was sold, any amount by which the value of the property, business, or undertaking at the time of the sale exceeded the consideration received by the company.

(3) Where the property, business or undertaking of a company has been transferred, charged or sold, or agreed to be transferred, charged or sold to, or in favour of, a third party, in payment of a debt or obligation of a connected person or related company, within 1 year of the commencement of the winding-up, the liquidator may recover from that third party any amount by which the value of the property, business or undertaking, at the time of the transfer, charge or sale, or the agreement to transfer, charge, or sell, exceeded the consideration received by the company or, where the company received no consideration as defined in subsection (6), the liquidator, subject to subsection (7) may recover the property, business or undertaking from the third party, free from any charge created on it by the company, which is void.

(4) In this section and section 117 “consideration” means money or money’s worth.

(5) Despite this section and section 117, the Court, on application, may in appropriate circumstances grant relief and refuse recovery in whole or in part if:

- (a) the person from whom recovery is sought received the money or property in good faith and has altered his or her position in the reasonably held belief that the payment or transfer to him or her was validly made and was not liable to be set aside; or
- (b) it would be unjust to order recovery in whole or in part.

119. Disclaimer of onerous property – (1) Where any part of the property of a company consists of property (including a contract) that, for whatever reason, is unprofitable or not readily saleable and the mere interest in the property binds the company, or is likely to bind the company, to the payment of any sum of money or the disposition of any assets of the company, the liquidator of the company, even though he or she has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relationship to it, subject to this section, by writing signed by him or her, at any time within 4 months after the commencement of the winding-up, may disclaim the property and immediately send a copy of it to a person affected thereby of whom he or she has actual notice; but where any the property has not come to the knowledge of the liquidator within 3 months after the commencement of the

winding-up, the power of disclaiming may be exercised at any time within 3 months after he or she has become aware thereof.

(2) A disclaimer by the liquidator of a company operates to determine, as from the date of disclaimer, the rights, interests and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but does not, except so far as it is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) A liquidator of a company may not disclaim any property if an application in writing has been made to him or her by any person interested in the property requiring him or her to decide whether he or she will or will not disclaim and the liquidator has not, within the period of 2 months after the receipt of the application, or such further period as may be allowed by the Court, given notice to the applicant that he or she intends to disclaim and, in the case of a contract, if the liquidator after such an application in writing does not within that period or further period disclaim the contract, the company is deemed to be bound by it.

(4) Any interested person aggrieved by any disclaimer by the liquidator under this section within 30 days of the date of that disclaimer, may apply to the Court to have the disclaimer set aside and, if the Court so orders, the disclaimer must be set aside and is *void ab initio*.

(5) A party to a contract with a company in respect of which winding-up has commenced, which contract has not been disclaimed by the liquidator, either with or without requiring the liquidator to elect whether he or she disclaims the contract, may require the liquidator to state whether he or she intends to endeavour to perform the contract so far as the same remains to be performed on the part of the company, and, in the event of the liquidator failing to state within 2 months after receipt of a notice by him or her requiring him or her so to do that he or she so intends, that party, with the consent of all other parties to the contract, if any, other than the liquidator, without being liable in damages for rescission of the contract, may rescind the contract and any amount recoverable by the company pursuant to such rescission may be thereupon recovered by the liquidator from the other party or parties and any amount recoverable from the company pursuant to such rescission may be proved for in the winding-up by such other party or parties, provided however that a liquidator must not become personally liable for the performance of the contract by reason only

that he or she states whether or not he or she proposes to endeavour to perform it, unless he or she makes such statement fraudulently.

(6) Upon application by any person interested in any property the subject of a disclaimer, the Court may make an order for the vesting of the property in or the delivery of the property to the person entitled to it subject to such terms it thinks fit.

Division 7 - Offences

120. Offences by officers of companies in liquidation –

(1) A person commits an offence who, being a past or present officer of a company which is being wound up:

- (a) does not to the best of his or her knowledge and belief fully and truly discover to the liquidator all the property real and personal of the company and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;
- (b) does not deliver up to the liquidator or as he or she directs—
 - (i) all the real and personal property of the company in his or her custody or under his or her control and which he or she is required by law to deliver up; or
 - (ii) all books and papers in his or her custody or under his or her control belonging to the company and which he or she is required by all to deliver up;
- (c) within 6 months next before the commencement of the winding-up or at any time after—
 - (i) has concealed any part of the property of the company or has concealed any debt due by the company;
 - (ii) has fraudulently removed any part of the property of the company;
 - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper effecting or relating to the property or affairs of the company;
 - (iv) has made or has been privy to the making of any false entry in any book or paper affecting or

- relating to the property or affairs of the company;
- (v) has fraudulently parted with, altered or made any omission in, or has been privy to parting fraudulently with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;
 - (vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit for which the company has not subsequently paid;
 - (vii) has obtained on credit, for or on behalf of the company under the false pretence that the company is carrying on its business or has a current certificate of incorporation, any property for which the company has not subsequently paid; or
 - (viii) has pawned, pledged or disposed of any property of the company obtained on credit and for which the company has not paid, unless such pawning, pledging or disposing was in the ordinary way of business of the company;
- (d) wilfully makes any material omission in any statement relating to the affairs of the company;
 - (e) knowing or believing that a false debt has been proved by any person fails for a period of 1 month to inform the liquidator thereof;
 - (f) prevents the production of any book or paper affecting or relating to the property or affairs of the company;
 - (g) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding-up;
 - (h) has attempted to account for any part of the property of the company by making entries in the books of the company showing fictitious losses or expenses.
- (2)** It is a defence to a charge under subsection (1) if the accused proves that he or she had no intent to defraud or to conceal the state of affairs of the company, as the case may be, or to defeat the law.
- (3)** If a person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(c)(viii), any other person who takes in a pawn or pledge or

otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances commits an offence.

(4) A person who in any return, report, certificate, balance sheet or other document required by or for the purposes of this Act wilfully makes a statement false in any material particular knowing it to be false commits an offence.

121. Frauds by officers – A person who, while an officer of a company which is subsequently wound up:

- (a) by false pretences or by means of any other fraud has induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or
- (c) with intent to defraud creditors of the company has concealed or removed any part of the property of the company since or within 2 months before the date of any unsatisfied judgement or order for payment of money obtained against the company,

commits an offence.

Division 8 – Defunct Companies

122. Power of the Registrar to strike companies off the Register – (1) The Registrar may strike off from the Register the name of a company:

- (a) which ceases to comply with any of the requirements of section 6 (save as allowed under section 7), 16, 43(2), 51 or 58;
- (b) for failure to pay its prescribed annual renewal fee or penalties, as specified in the regulations;
- (c) for failure to comply with a direction from the Registrar under this Act;
- (d) which is not carrying on business or in operation;
- (e) which has been directed by the Authority under this Act to cease to carry on its business;
- (f) which is being wound up, and has no liquidator acting or whose affairs have been fully wound up.

(2) Where the Registrar intends to strike off the name of a company under this section, he or she must give notice of his or her intention to the company at its registered office in Samoa, and the notice must state that if an answer showing cause to the contrary is

not received within 2 months from the date of the notice, the Registrar will strike the name of the company off the register.

(3) At the expiration of the time specified in the notice to a company under subsection (2), or such further time as the Registrar deems fit, he or she may, unless cause to the contrary is previously shown, strike the name of the company off the register before the company is dissolved; however:

- (a) the liability, if any, of every officer of the company continues for a period of 2 years following the date upon which the company was dissolved and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection affects the liability of the company to be wound up pursuant to the provisions of this Act.

(4) Upon the request of a company, such request having been approved by the holder of the Founder's Rights Certificate and being accompanied by a statutory declaration signed by all of the directors to the effect that the company no longer carries on business and has no outstanding liabilities to creditors and no assets (other than assets represented by cash) the Registrar must, unless he or she has cause to believe that the contents of the directors' statutory declaration are incorrect, strike the name of the company off the register before the company is dissolved and subsection (2) applies *mutatis mutandis*.

(5) Where a company has been struck off the Register, the Registrar may:

- (a) upon the application of the company or a trustee company on its behalf, or a creditor, or liquidator of the company; and
- (b) if he or she is satisfied that due cause has been shown and that it would be just for the name of the company to be restored to the Register; and
- (c) upon payment of the prescribed fee and any outstanding fees and penalties; and
- (d) upon the filing of such documents and statutory returns as the Registrar may direct,—

restore the company to the Register and upon restoration of the company to the Register, the company is deemed to have continued in existence as if it had never been struck off the Register.

(6) Where costs, charges, fees or arrears are paid under subsection (5) in respect of a company which is being wound up,

the costs, charges, fees or arrears are deemed to be costs of the liquidation.

(7) Despite subsections (1) and (3), where a company, or an officer of a company, notifies the Registrar in writing that the company does not intend to pay the prescribed annual renewal fee on the date when it next becomes due and payable, the Registrar may immediately strike the name of the company off the register without having given to the company any notice of his or her intention to do so; and the striking-off of the name of the company is deemed to have been done under subsection (3).

(8) Where a company has been dissolved, the Court may, at any time within 2 years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested make an order upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon proceedings may be taken which might have been taken as if the company had not been dissolved.

(9) The person on whose application an order is made under subsection (8) must within 7 days after the making of the order, or such further time as the Court may allow, to deliver to the Registrar for registration a sealed copy of the order and if that person fails to do so he or she commits an offence under this Act.

123. Registrar to act as representative of defunct company in certain events – (1) Where, after a company has been dissolved, it is proved to the satisfaction of the Registrar:

- (a) that the company, if still existing, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and
- (b) that in order to carry out, complete or give effect the dealing, transaction or matter, some purely administrative act, not discretionary, should have been done by or on behalf of the company, or should be done by or on behalf of the company if still existing,—

the Registrar may, as representing the company or its liquidator under the provision of this section, do or cause to be done any such act.

(2) The Registrar may execute or sign any relevant instrument or document adding a memorandum stating that he or she has done so in pursuance of this section, and the execution or signature has

the same force, validity and effect as if an international company still existing had duly executed such instrument or document.

124. Outstanding assets of defunct company to vest in Registrar – (1) Where, after a company has been dissolved, there remains any outstanding property, real or personal, including choses in action, and whether within or outside Samoa which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was so dissolved, but which was not got in realised upon or otherwise disposed of or dealt with by the company or its liquidator, the property, for the purposes of the following subsections and despite any enactment or rule of law to the contrary, becomes vested in the Registrar for all the estate and interest in it, legal or equitable, of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect thereof.

(2) The Registrar may sell or otherwise dispose of or deal with such property 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 he or she thinks fit with power to rescind any contract and resell or otherwise dispose of or deal with such contracts, instruments and documents as he or she thinks necessary.

(3) The moneys received by the Registrar in the exercise of any of the powers conferred on him or her by this section must be applied first in defraying all incidental costs, expenses, fees and commissions before they are donated to a charity or charities in Samoa as the Authority determines.

(4) Any action for or in respect of any moneys paid under subsection (3) must be against the Attorney-General as the nominal defendant and must be instituted within 2 years next after the dissolution of the company after which time no such action is to be instituted and the claim is to be absolutely barred.

PART 7 MISCELLANEOUS

125. Service of documents on companies – Any document may be served on a company by leaving it at or sending it by post to the registered office of the company in Samoa, addressed to the company directly or in care of the trustee company which provides the registered office of the company.

126. Rights of charities against company – (1) Even though a company is incorporated only for the fulfilment of charitable purposes and may only make distributions to charity, and that a particular charity may be named as a prospective recipient of distributions in the memorandum of a company, no particular charity:

- (a) has any interest in the company's property; and
- (b) is not owed by the company, by the holder of the Founder's Rights Certificate or by any director or officer of the company any duty that is, or is analogous to, a fiduciary duty,

and only charity generally, represented by the Attorney-General, may be concerned with the affairs of a company and then only in an action brought upon a bona fide complaint lodged with the Registrar about the general mismanagement of a company to the possible detriment of charity.

(2) Without prejudice to subsection (1), if a particular charity has become absolutely entitled to a distribution from a company, either in accordance with the company's memorandum or articles or as a consequence of a resolution of its directors, and that distribution is not made in the manner or at the time of entitlement, the particular charity may petition the Attorney-General to bring an action before the Court against the company to enforce distribution of its entitlement.

(3) A particular charity presenting a petition under subsection (2) must present its petition to the Attorney-General within 6 months of becoming aware of its entitlement to a distribution from the company not having been made at the time or in the manner due and present there in satisfactory evidence of the petition being presented in time.

(4) The Attorney-General may act upon a petition made under subsection (2) within the time allowed under subsection (3) as he or she sees fit.

127. Further endowment of company – (1) A person making a gift or donation of property to, or endowment of property upon, a company after it has been incorporated must not, by virtue of that gift, donation or endowment being made, acquire any rights:

- (a) against the company or its property; or
- (b) in respect of the management or administration of the company; or
- (c) in regard to the property given, donated or endowed.

(2) A company must not accept any gift, donation or endowment of property, whether unconditional or subject to conditions, and the decision whether to so accept, including whether to accept any conditions attached to the property, if the property be accepted, rests entirely with the directors.

(3) Unless and until the directors have resolved to accept property by way of gift, donation or endowment, the company must not receive the subject property.

(4) Upon due receipt by the company of the property which is the subject of a resolution of the directors made under subsection (3), the property must be added to the capital of the company and form part of its contributions.

(5) A resolution passed under subsection (3) must include within it the name of the person making the gift, donation or endowment and the company must retain satisfactory evidence of identity of that person.

(6) In respect of every further gift donation or endowment of a company after its incorporation and without prejudice to subsection (5), the company must have and retain in regard to the property and the transferor information that are necessary to comply with its obligations to the Money Laundering Authority under the Money Laundering Prevention Act 2007.

(7) A company may receive contributions from any person (including charities) it thinks fit, and, in the absence of actual knowledge or reasonable grounds to suspect to the contrary, the company and every officer of the company is entitled to assume that a contribution is a bona fide gift or donation to, or endowment of, the company for the ultimate benefit of charity; and no company, nor any officer of a company, is required to know, or enquire into, the laws (other than the laws of Samoa) binding upon a contributor which may impact upon his or her right to make a gift or donation to, or endowment of, the company for the ultimate benefit of charity.

(8) In receiving contributions from any contributor, the company and every officer of the company, in the absence of actual knowledge or reasonable grounds to suspect to the contrary, may treat the title of the contributor to the property contributed as absolute and unimpaired; and accordingly, upon accepting such property so treated, the company's title to the property is absolute and unimpeachable; no company, nor any officer of a company, is required to know, or enquire into, the laws (other than the laws of Samoa) binding upon the contributor which may impact upon his or

her right to transfer absolute and unimpaired title to the property the subject of the contribution to the company.

(9) No company, unless ordered otherwise by the Court, is required to pay heed to or be bound by, the claims of any creditor of a contributor to property contributed to the company and accepted by the company in good faith as an absolute gift or donation to, or endowment of, the company, for the ultimate benefit of charity.

(10) For the avoidance of doubt, persons resident in Samoa are entitled to make contributions to a company comprised of property outside of Samoa.

128. Costs before Registrar – In respect of any proceedings before the Registrar under the provisions of this Act the Registrar at his or her own discretion may direct that the costs of 1 party be paid in an amount and by any other party as the Registrar thinks just.

129. Security for Costs - Where a company is a plaintiff in any court action or other legal proceedings the Court may at any time require sufficient security to be given for costs and stay all proceedings until the security is given.

130. Power to grant relief – (1) In any proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies, if it appears to the Court before which the proceedings are taken that he or she is or may be liable in respect thereof but that he or she has acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with his or her appointment, he or she ought fairly to be excused for the negligence, default or breach, the Court may relieve him or her either wholly or partly from his or her liability on such terms as the Court thinks fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him or her in respect of any negligence, default, breach of duty or breach of trust he or she may apply to the Court for relief, and the Court has the same power to relieve him or her under this section as it would have had if it had been a Court before which proceedings against him or her for the negligence, default, or breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies in respect of any particular company are:

- (a) all persons being or having been officers of that company;

- (b) the trustee company holding the Founder's Rights Certificate and any trustee company which was a prior holder of a Founder's Rights Certificate, of that company;
- (c) all persons being or having been employed by that company as auditors, whether or not they are officers of the company;
- (d) experts within the meaning of this Act; and
- (e) all persons including receivers and managers or liquidators who are appointed or directed by the Court or the Registrar to carry out any duty under this Act in relation to that company.

131. Irregularities in proceedings – (1) Proceedings under this Act must not be invalidated by any defect, irregularity or deficiency of notice or time unless the Court or the Registrar is of opinion that substantial injustice has been or may be caused thereby which cannot be remedied by any order of the Court or direction of the Registrar and the Court or the Registrar may, if it or he or she thinks fit, make an order or direction declaring that such proceeding is valid despite any such irregularity or deficiency.

(2) Without affecting the generality of subsection (1) or of any other provision of this Act, where any omission, defect, error or irregularity, including the absence of a quorum at any meeting, has occurred in the management or administration of a company whereby any breach of any of the provisions of this Act has occurred, or whereby there has been default in the observance of the memorandum or articles of the company or whereby any proceedings at or in connection with any meeting or purported meeting have been rendered ineffective, including the failure to make or lodge any declaration of solvency, the Court or the Registrar:

- (a) may, either of its or his or her own motion or on an application lodged by any interested person, make such order or direction as it or he or she thinks fit to rectify or cause to be rectified or to negate or modify or cause to be negative or modified the consequences in law of any such omission, defect, error or irregularity, or to validate any act, matter or thing rendered invalid by or as a result of any such omission, defect, error or irregularity; and
- (b) must before making any such order or direction satisfy itself, himself or herself that such an order would not

do injustice to the company or to any creditor thereof, or any other person; and

(c) where any such order or direction is made, may give such ancillary or consequential directions as it or he or she thinks fit; and

(d) may determine what notice or summons is to be given to other persons of the intention to make any such application or of the intention to make such an order, or direction and whether it should be the subject of a public notice.

(3) In subsection (2), “meeting” includes:

(a) a resolution of the holder of the Founder’s Rights Certificate, however made; and

(b) a meeting of the debenture holders or of any class of debenture holders of the company; and

(c) a meeting of the directors of the company or of any committee of the directors; and

(d) a meeting of the creditors or of any class of the creditors of the company; and

(e) a written resolution of the directors of the company or of any committee of its directors.

(4) The Court or the Registrar, whether the company is in process of being wound up or not, may extend or shorten any time for doing any act or taking any proceedings allowed or limited by this Act or any regulations hereunder upon such terms, if any, as the justice of the case may require and any such extension may be ordered although the application for the same is not made until after the time originally allowed or limited.

132. Translation of documents – (1) Where under this Act a trustee company or a company is required to lodge with the Registrar any instrument, certificate, contract or document or a certified copy thereof and the same is not written in the English language the company must lodge with the Registrar at the same time a certified translation thereof, which is authentic for all purposes under this Act, and the certified translation may be contained in the body of the original document or may be contained in a separate document attached to the original document.

(2) Where under this Act a company is required to make available for public inspection any instrument, certificate, contract or document and the same is not written in the English language the company must keep at its registered office in Samoa a certified translation of the relevant document.

(3) For the purpose of this section a “certified translation” means a translation into the English language certified as a correct translation by the translator before:

- (a) a diplomatic or consular officer of any country;
- (b) a notary public, justice of the peace or similar person of any country;
- (c) any solicitor or barrister in Samoa or similar person of any country; or
- (d) any other person before whom by any law of Samoa affidavits may lawfully be sworn for use in proceedings in any Court in Samoa.

(4) Where any instrument, certificate or document or a certified copy thereof has been filed with the Registrar under this Act in the English language, a trustee company or a company may also file a translation of the document into any other language.

(5) The translation must either be certified by the translator, pursuant to subsection (3) or certified by the trustee company submitting the document as being a true translation executed by a translator fluent in English and that other language.

133. Documents by electronic transfer – Where a notice or document is required by this Act to be lodged or filed with the Registrar he or she may accept a photocopy of the notice or document or a copy by telefax or other electronic means.

134. Filed memorandum and articles – (1) Where this Act requires that the memorandum or articles of a company be sent to the Registrar, then unless otherwise specifically provided in this Act or by Regulations, such documents may be delivered in such manner as the Registrar approves.

(2) A signature required on any document referred to in subsection (1) may be printed or otherwise mechanically or electronically reproduced on the document.

(3) A document with a signature referred to in subsection (2) may be accepted in evidence, despite any provision to the contrary in the Evidence Ordinance 1961.

135. Alteration of documents by the Registrar – The Registrar may alter a notice or document other than an affidavit or statutory declaration, if so authorised by the person who sent him or her the notice or document or by the representative of that person.

136. Retention of records of companies struck off the Register – (1) The Registrar need not produce any document or other records of a company that has been struck off the Register, after 7 years from the date the company was so struck off the Register.

(2) A trustee company need not retain the records of a company that has been struck off the Register after 7 years from the date the company was so struck off the Register.

137. Distribution payable from earned surplus and capital surplus – (1) A company may effect distributions from both its earned surplus and its capital surplus; and subject to Part 5 may do so at any time during its continuing operations provided no such distribution may render the company insolvent.

(2) Save as may be provided in the memorandum or in a notice from the holder of the Founder's Rights Certificate as to the charity or charitable purpose to benefit from distributions made by the company during its continuing operations, the charity or charitable purpose, including in Samoa, so to benefit is to be determined by the directors.

138. General penalty provisions – (1) Subject to this Act, a person who knowingly and wilfully does any of the following, for which no specific penalty is provided under this Act or under subsections (2) and (3), commits an offence and is liable, upon conviction, to a fine not exceeding 50 penalty units, and in the case of a second or subsequent offence, to a fine not exceeding 100 penalty units:

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

(2) A person who commits an offence against section 8, 37, 54 or 120 is liable, upon conviction, to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 6 months, or both.

(3) A person who commits an offence against section 47, 121, or 147 is liable, upon conviction:

- (a) to a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both, in respect of each such offence; and

- (b) for each second or subsequent offence, to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 5 years, or both.

139. Procedure where none laid down – In the event that any act or step is required to be done under this Act and no form is prescribed or procedure laid down in this Act or the regulations for doing the same, the Registrar may, in response to an application to him or her, or on his or her own motion, give directions as to the manner in which the same may be done and any act or step done or taken in accordance with his or her directions is a valid performance of such act or step.

140. Regulations – (1) 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 are necessary or convenient to be provided for the carrying out of, or giving full effect to, the provisions of this Act and its due administration, including the prescribing of forms and the matters to be specified in the forms, the prescribing of forms of applications and notices, the fixing of fees and charges and penalties.

(2) In the event that any act or step is required or permitted to be done under this Act, and no form is prescribed, or procedure laid down, in this Act or in Regulations made pursuant to subsection (1), written application may be made to the Registrar by a trustee company for written directions in the matter and any act done or step taken in accordance with such written directions is valid.

(3) Upon each written application received under subsection (2) the Registrar must, unless the matter is referred to the Attorney-General, give written directions within 90 days of receipt of such application to the trustee company seeking the same.

(4) If a matter the subject of a written application under subsection (2) is referred by the Registrar to the Attorney-General, the trustee company making the application must be so notified by the Registrar within 10 days of the referral.

(5) Upon advice received from the Attorney-General upon a matter referred to him or her by the Registrar, the Registrar must within 30 days give written direction to the trustee company which made the application for directions under subsection (2).

(6) Any matter the subject of written direction by the Registrar under subsection (2) or (5) must be adopted into regulations as soon as practicable.

141. Rules of Court – Rules of court concerning proceedings for the winding-up of companies and for giving effect to the other provisions of this Act may be made under the Judicature Ordinance 1961.

142. Appeals – (1) An appeal lies to the Court in respect of any decision, direction or approval made, given or refused by the Registrar in exercise of his or her powers under any 1 or more of the sections, subsections, paragraphs and sub-paragraphs of this Act.

(2) Pending the determination of an appeal brought under subsection (1), no step is to be taken consequently upon such decision, direction, approval, or refusal unless the Court, or a Judge or the Registrar of the Court otherwise orders.

143. Power of exemption – (1) The Authority on application in writing lodged with the Registrar by a trustee company on behalf of a company may exempt any person, company or class of person or companies from all or any part of the provisions of this Act, and may specify such terms and conditions as it thinks fit in respect of any such exemption, and any such exemption may be revoked at any time in like manner.

(2) For the purposes of this section a class of companies may be determined by reference to:

- (a) the business activities of the company;
- (b) the company's involvement with any trustee company;
- or
- (c) any other matter as the Authority may determine.

144. Prohibitions by Authority – (1) The Authority, acting on the advice of the Registrar, has an absolute right without assigning reasons to issue, by public notice, a direction:

- (a) prohibiting the incorporation of any company or class of companies;
- (b) directing any company to cease to carry on its business or part of its business either immediately or within such time as may be specified in the direction.

(2) A direction made under this section may be revoked or varied by the Authority, acting on the advice of the Registrar.

(3) In making a direction under this section the Authority must not be required to act judicially, and such direction is final.

145. No action to lie against certain persons – No action is to lie against the Government or any statutory body or authority of Samoa, the Head of State, or any Minister, any judge or any public officer in respect of anything done or omitted in exercise or purported exercise by the Head of State or any Minister or any statutory body or authority of Samoa, any Judge or any public officer of its or his or her functions or duties under this Act.

146. Enforcement of indemnity – Where a company provides in its memorandum or articles that any director, secretary or other officer or servant has a right of indemnity in respect of costs, charges, losses, damages or expenses incurred that indemnity (if otherwise enforceable) may be sued upon by any person to whom that indemnity is expressed as extending even though that person may not be a signatory to the memorandum or articles and is as binding and enforceable as if contained in a deed executed by the company for the benefit of that person.

147. Confidentiality – (1) For the purposes of this section, information or communications of a company (whether in or from Samoa or elsewhere) are “information or communications to which this section relates”, if the information or communication relates to or concerns:

- (a) the holder of the Founder’s Rights Certificate of such a company;
- (b) the identity of any person who has added to the contributions of 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 commits an offence 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;
- (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.

(3) Despite subsection (1) and subject to subsection (4), it is not 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 such a 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 such a 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” does not include the compliance with any demand or request for information about the business of the company made by any foreign government or any court or tribunal of any country other than Samoa without the consent of the holder of the Founder’s Rights Certificate or the Registrar;
- (d) by an officer of such a 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 any crime, or laundering of the proceeds of any crime, whether that crime or laundering occurred in Samoa or elsewhere but provided that the actions comprising the crime would, if done in Samoa, have constituted a crime in Samoa;
- (e) by any person to a liquidator, or to an officer of such a company or trustee company in the performance of his or her duties as an officer;

- (f) by an officer of such a company to any person where all of the directors of that company consent to such disclosure;
- (g) by the Registrar in making available for inspection and copying under the provisions of this Act, a copy of the company's memorandum or articles of association and any alterations to them;
- (h) by the Registrar or any public officer or any statutory body or authority of Samoa in vetting, verifying and investigating applicants for all offshore licenses and registrations issued by the Government pursuant to any offshore finance legislation, including the International Banking Act 2005, International Insurance Act 1988 and Trustee Companies Act 1988;
- (i) by the Registrar or any public officer in making available for inspection an index of company names and their registered offices;
- (j) 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;
- (k) by the Money Laundering Prevention Authority to any other domestic or any 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;
- (l) 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 provisions of this Act;
- (m) by any person to ensure compliance with the Money Laundering Prevention Act 2007 and the Counter Terrorism Act 2014.

(4) Despite 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 must be kept confidential.

(5) In recognition of the desirability of maintaining confidentiality in respect of the activities of all companies, the Authority may do all things which, in its opinion, are necessary to give effect to the provisions of this section.

(6) This section applies to any company to the extent to which that information relates to:

- (a) any activities which the company conducts in Samoa; or
- (b) any person associated with the company who is a lawful resident of Samoa.

(7) Nothing in this section prevents 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.

(8) This section is subject to section 10 of the Tax Information Exchange Act 2012.

148. Court proceedings relating to confidential information – (1) All civil proceedings relating to companies commenced in any Court:

- (a) under the provisions of this Act; or
- (b) for the purpose solely of determining the rights or obligations of officers or the holders of the Founder's Rights Certificate or any debentures; or
- (c) relating to any appeal from a decision concerning proceedings referred to in paragraph (a) or (b),–

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

(2) Subsection (1) does not apply if and to the extent that the Court orders that:

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

149. Procedures for obtaining court order for the disclosure of confidential information – (1) Subject to subsections (2) to (5), a Court may order that the records and registers of a 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 a company the Court is satisfied that the company or any officer of the company has failed to comply with any provisions of this Act; or
- (b) a 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 under 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 must:

- (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 person affected by the order may 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 is no right to inspect documents deposited with the Registrar until the court confirms the order under subsection (4)(c).

(6) This section applies to the exclusion of any other rule of procedure or right of action existing under the laws of Samoa.

150. No confiscation – There is no compulsory acquisition or expropriation of a company’s property situated in Samoa except:

- (a) in accordance with the due process of law;
- (b) for a public purpose defined by law; and
- (c) with payment of compensation as defined by law.

151. Form of company registers and records – (1) Subject to this Act, any records, accounts or documents required to be kept by a company pursuant to this Act may be kept in written, magnetic, electronic or any other data storage form, provided that the company can readily produce legible printed evidence of its content.

(2) Any register, records, accounts or documents required to be kept by the Registrar pursuant to this Act may be kept in written, magnetic, electronic or any other data storage form, provided that a legible printed copy of its content can be produced.

152. Emergency trust – (1) This section only applies to a company if the articles of that company state that the section so applies.

(2) In this section:

“expropriation” means any act of confiscation, compulsory acquisition, nationalisation or any similar act;

“specified event” means any event stated in the articles of the company, or a deed served upon the company by the holder of the Founder’s Rights Certificate, to be a specified event in respect of company.

(3) The articles of a company, or a deed served upon the company by the holder of the Founder’s Rights Certificate, may provide that on the happening of any specified event (including without limitation where any foreign government expropriates any property of that company or of any subsidiary or related body corporate) then the provisions of this section apply.

(4) Upon the occurrence of any specified event:

- (a) the property of the company affected by that event or, if the specified event affects the property of a subsidiary or related body corporate of that company, the interest of the company in that subsidiary or related body corporate (“affected interest”), automatically vests in the trustee company which is then the holder of the Founder’s Rights Certificate upon trust for charity generally in the manner stated in the articles of, or the relevant deed served upon, the company; and
- (b) no other person (including the company) has rights in or to the affected property or interest.

(5) The holder of the Founder’s Rights Certificate of a company may serve upon that company a notice to nominate in respect of the whole or any part of the affected interest one or more specified charities, and if more than 1 the proportions and manner in which the affected interest specified in the nomination must be held for those specified charities, to take effect upon the happening of the specified event and generally in the manner stated in the notice.

(6) The holder of the Founder’s Rights Certificate of a company may at any time nominate an additional or replacement charity, or remove a specified charity nominated under subsection (5) by further notice in writing to the company.

153. Certificate of good standing – (1) The Registrar must, upon request by any person, issue a certificate of good standing under his or her hand and seal certifying that a company is of good standing if the Registrar is satisfied that:

- (a) the name of the company is on the Register; and
- (b) the company has complied with its obligations under this Act and has paid all fees, renewal fees and (if any) penalties due and payable thereunder.

(2) The certificate of good standing issued under subsection (1) must contain a statement as to whether:

- (a) the company is in the process of being wound up and dissolved; or
- (b) any proceedings to strike the name of the company off the register have been instituted.

(3) A certificate of good standing issued by the Registrar under subsection (1) is *prima facie* evidence of the matters contained in it.

154. Application of other Acts – (1) In this section:

“foreign currency” includes notes, coins, postal notes, money orders, bills of exchange, promissory notes, drafts, letters of credit and travellers’ cheques payable or expressed otherwise than in the currency of Samoa, and also includes rights and instruments of title;

“securities” includes shares, stocks, bonds, debentures, debenture stocks, Treasury bills and notes, and units or sub-units of a unit trust, and also includes deposit receipts in respect of the deposit of securities and documents of title to securities but does not include bills of exchange or promissory notes.

(2) Despite anything contained in any other enactment:

(a) a company except where the income is derived by such company in carrying on business in Samoa is exempt from the payment of income tax and from the payment of any other direct or indirect tax or stamp duty upon its transactions, contracts, securities and other dealings and upon its profits and gains; and

(b) a company is exempt from the payment of income tax and from the payment of any other direct and indirect tax or impost in respect of any dividends or earnings of, or upon any interest earned by, such company attributable to or paid upon the shares or securities of any body corporate incorporated under the International Companies Act 1988 that are beneficially owned by the company;

(c) no company is required to—

(i) deposit any money in any public account; or

(ii) file any accounts, returns, reports or records other than is required by this Act, or, if applicable, the International Banking Act 2005, the Trustee Companies Act 1988, or the International Insurance Act 1988.

(3) There is no currency and exchange control restrictions or regulations applicable to, nor foreign exchange levy or impost payable by, a company in respect of:

(a) the taking or sending of any foreign currency or security out of Samoa by any company acting on its own behalf or by an officer or employee of such a company for or on behalf of the company;

(b) the transfer of the interest of any person in any security issued by a company acting in its own behalf or by

an officer or employee of such company for or on behalf of the company; or

- (c) the drawing or negotiating of any bill of exchange or promissory note or the transfer of any security or the acknowledgment of any debt or the making of any payment, by a company acting in its own behalf or by an officer or employee of such a company for or on behalf of the company,

as consideration for receiving any payment or acquiring any property elsewhere than in Samoa by a company acting in its own behalf or by an officer or employee of such a company for or on behalf of the company, other than—

- (i) as consideration for receiving any payment or acquiring any property in Samoa; or
 (ii) as consideration for acquiring a right, whether actual or contingent, to receive any payment or acquire any property in Samoa; or
 (iii) as consideration for the discharge of a debt payable in Samoa.

(4) A company must not:

- (a) carry on business with, or in conjunction with carrying on a business acquire any assets from—
 (i) any natural person ordinarily resident in Samoa; or
 (ii) any domestic company which is not a trustee company,

but these do not prevent a person described in (i) or (ii) from making a contribution to a company; or

- (b) own an interest in land or real estate situated in Samoa other than a lease referred to in this section; or
 (c) make any disposition to or grant or settle any property (including shares or debentures) on—
 (i) any natural person ordinarily resident in Samoa; or
 (ii) any domestic company which is not a trustee company,

unless the disposition, grant or settlement is exclusively for charitable purposes; or

- (d) make any disposition or grant or settle any property outside Samoa in the currency of Samoa; or
 (e) carry on business as an insurance or reinsurance company or insurance manager unless it is licensed

under an enactment authorising it to carry on that business.

(5) For the purpose of this section a company must not be treated as carrying on business in Samoa with a domestic company by reason only that:

- (a) it makes or maintains deposits with a company carrying on banking business in or from within Samoa; or
- (b) it makes or maintains professional contact with solicitors, barristers, accountants, trustee companies, investment advisers or similar persons carrying on business in or from within Samoa; or
- (c) it prepares or maintains books and records within Samoa; or
- (d) it holds meetings of its directors in Samoa; or
- (e) it holds a lease of property for use as an office which it has established to maintain and manage its business interests outside Samoa and from which to communicate or where books and records of the company are prepared or maintained, or, being the holder or an off-shore banking license, operates, its business with the approval and consent of the Minister; or
- (f) it holds debentures or other securities in another company or holds shares, debentures or other securities of a body corporate incorporated under the International Companies Act 1988; or
- (g) debentures or other securities in the company are owned by any company or by a body corporate incorporated under the International Companies Act 1988.

(6) If a company contravenes subsection (4), it commits an offence and an officer of the company who knowingly permits the contravention is guilty of the same offence.

(7) It is an offence for a company, or an officer or employee of a company, to take or send, or cause or permit to be taken or sent out of Samoa, money or securities which are owned or controlled by a natural person ordinarily resident in Samoa or by a domestic company which is not a trustee company.

155. Exemption of non-resident recipients of income –

A natural person not resident in Samoa is not subject to the imposition of any fee, impost, tax, levy, dues or excise in relation to any income derived by the non-resident person from employment by or services to a company, other than where the income is derived

by that non-resident person wholly from activities of that person in Samoa.

156. Application of Money Laundering Prevention Act 2007 – The Money Laundering Prevention Act 2007 applies to a company.

157. Application of Counter Terrorism Act 2014 – The Counter Terrorism Act 214 applies to a company.

158. Application of Trustee Companies Act 1988 – Sections 8, 9, 10, 16, 25, 26 and 31 of the Trustee Companies Act 1988 apply, *mutatis mutandis*, to a company.

SCHEDULE 1 (Section 18(1))

THE POWERS OF A SPECIAL PURPOSE INTERNATIONAL COMPANY

1. To carry on any business, other than a business which is prohibited by the laws of Samoa or the regulations from carrying on, which may seem to the company capable of being conveniently carried on or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights or be of benefit to charity.
2. To receive any lawful gifts donations and endowments from any person and to make gifts and donations and endowments to charity which may lawfully be made.
3. By way of settlement or other dealing or disposition to give the right to a specific charity or charitable purpose to share in the whole or any part of its gains or profits provided that in exercising such power no distribution of gains or profits is made under the settlement disposition or other dealing which would exceed the amount properly capable of being distributed.
4. To distribute any of the property of the company comprised in its surplus to charity, in kind or otherwise.
5. To enter into or be a party to any transaction or document.
6. To acquire, hold, dispose of or deal with any information or rights or property of any kind.
7. To acquire, hold, dispose of or deal with the whole or any part of the undertaking of any other company, body corporate, association or business.

8. To dispose of or otherwise deal with the whole or any part of its undertaking or business.
9. To assume any duties, obligations or liabilities.
10. To acquire any rights or interests.
11. To provide or procure provision of any services.
12. To lend and to borrow.
13. To procure its registration or recognition as a body corporate in any place outside Samoa.
14. To create and extinguish liabilities and rights and interests.
15. To take shares, debentures and options and to redeem and forfeit the same.
16. To employ or retain any person in and about its business or the business of any other body corporate which is a related party to the company or concerning any other person.
17. To give indemnities and guarantees and obtain indemnities and guarantees.
18. To take out insurance of all kinds whether over the property or rights of the company or not.
19. To promote any other body corporate.
20. To promote any other business.
21. To give security by charging its assets.
22. To grant a floating charge on the whole or any part of its undertaking or property.
23. To make provision in connection with the cessation of the whole or part of the business of the company, or of any subsidiary of the company, for the benefit of any subsidiary of the company, for the benefit of employees or former employees of the company or of a subsidiary of the company or for the dependents of such employees or former employees.
24. To do any of the things which it may do in association with any other person and as principal or agent or as trustee or for its own benefit.
25. To do all such other things as are incidental or conducive to the exercise of the other powers of the company and which are not prohibited by the laws of Samoa or the regulations made under this Act.

SCHEDULE 2

TABLE A **(section 23(1), 24)**

**ARTICLES FOR MANAGEMENT OF A SPECIAL
PURPOSE INTERNATIONAL COMPANY****INTERPRETATION**

1. In these Articles words and expressions, except in so far as the context or subject-matter otherwise indicates or requires, have the same meaning as in the Special Purpose International Companies Act 2012 and further:
 - “Secretary” means any person appointed to perform the duties of a secretary of the company;
 - “Act” means the Special Purpose International Companies Act 2012;
 - “Office” means the registered office of the company in Samoa;
 - “Seal” means the common seal of the company.

DIRECTOR’S APPOINTMENT, ETC.

2. The number of the directors, the names of the first directors and the fees, if any, of the first directors must be determined in writing by the subscriber of the memorandum.
3. The holder of the founder’s rights certificate may by written notice to the company increase or reduce the number of directors.
4. The directors may at any time appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors must not at any time exceed the number fixed in accordance with these Articles.
5. The holder of the founder’s rights certificate may by written notice remove any director and may by the same or separate written notice appoint another person in his or her stead.
6. The remuneration of the directors may be fixed or varied by the holder of the founder’s rights certificate and are deemed to accrue from day to day; the directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or of any committee of the directors or in connection with the business of the company.
7. A director may be a company whether incorporated in Samoa or elsewhere and may act through a representative or delegate appointed by written notice lodged with the secretary.
8. The office of director becomes vacant if the director:

- (a) ceases to be a director by virtue of the Act;
- (b) within Samoa or elsewhere is adjudged bankrupt or insolvent or makes any arrangement or compromise with his or her creditors generally;
- (c) becomes prohibited from being a director by reason of any order made under the Act;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mentally-disordered persons; or
- (e) resigns his or her office by notice in writing to the company.

POWERS AND DUTIES OF DIRECTORS

- 9. The business of the company is to be managed by the directors who may pay all expenses incurred in forming and incorporating the company and, subject to these Articles and the Act, may exercise all such powers of the company as are not, by the Act or by these Articles required to be exercised by the holder of the founder's rights certificate.
- 10. The directors may exercise all the powers of the company to borrow money and to mortgage or charge its undertaking or property, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt liability or obligation of the company or of any third party.
- 11. The directors may make provisions for the establishment of branches of the company outside Samoa in accordance with the provisions of the Act, and for the making and use of any seal for use outside Samoa and in relation to branch registers to be kept outside Samoa.
- 12. The directors may by power of attorney executed under the Seal appoint any body corporate, or individual or group of individuals (including a partnership) to be the attorney or attorneys of the company in accordance with the Act.
- 13. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the company, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the directors determine.
- 14. The directors must cause minutes to be made:
 - (a) of all appointments of officers;
 - (b) of the names of the directors present at all meetings of the directors; and

(c) of all proceedings at all meetings of the directors.

Such minutes must be confirmed and signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting and then included in the director's meeting minute book of the company.

15. All resolutions in writing signed by all directors pursuant to the provisions in that behalf contained in these Articles must be included in the director's meetings minute book of the company.
16. The Secretary is hereby empowered to issue under hand certified extracts from or true copies of any resolutions of the directors.

PROCEEDINGS OF DIRECTORS

17. The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, and a director may at any time, and the secretary must on the requisition of a director, summon a meeting of the directors, to be held no sooner than 7 days after the summons unless all the directors consent to an earlier day.
18. Subject to these Articles, questions arising at any meeting of directors must be decided by a majority of votes and a determination by a majority of directors is for all purposes deemed a determination of the directors, and in case of an equality of votes the chairman of the meeting has a second or casting vote.
19. A director may not vote but may (where the total number of directors is less than 3) be counted in the quorum in respect of any contract or proposed contract with the company in which he or she is in any way interested or on any matter arising and a contract entered into by the company in which a director is in any way interested and who voted at the meeting is voidable; and every director is liable to account to the company for any profits realized by any person from such contract and for any remuneration from any office held by him or her by reason of his or her being a director unless approved by the other directors of company, or the holder of the founder's rights certificate.
20. Any director with the written approval of the holder of the founder's rights certificate may appoint any person to be his or her alternate or substitute director to act in his or her place during such period as he or she thinks fit. Any person while he or she so holds office as an alternate or substitute director is entitled to notice of meetings of the directors and to attend and

vote thereat accordingly if his or her appointor is not present, and to exercise all the powers of appointor in his or her place. An alternate or substitute director may also sign any written resolution of directors if his or her appointor is not available to sign. An alternate or substitute director must ipso facto vacate office if the appointor vacates office as a director or removes the appointee from office. Any appointment or removal under this Article must be effected by notice in writing under the hand of the director making the same.

21. The quorum necessary for the transaction of the business of the directors may be fixed by the directors; but until so fixed it must be 1 less than the total number of directors unless the total number of directors is less than 3, then the quorum must be all the directors.
22. The directors may act despite any vacancy in their body or failure to appoint the total number of directors fixed by or under these Articles but, if and so long as their number is less than the number fixed by or under these Articles as the necessary quorum of directors, the remaining directors or director may act for the purpose of increasing the number of directors to that number or of requisitioning the holder of the founder's rights certificate to make an appointment of a director, but for no other purposes.
23. The directors may elect from their number a director to act as chairman of their meetings and determine the period for which he or she is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present within 15 minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of that meeting.
24. The directors may delegate any of their powers to committees consisting of such of their number as they think fit; any committee so formed must in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.
25. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 15 minutes after the time appointed for holding the meeting, the committee members present may choose one of their numbers to be chairman of the meeting.
26. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting must be determined by a majority of votes of the committee members present, and in the

case of an equality of votes the chairman has a second or casting vote.

27. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director are, even though it is discovered that there was some defect in the appointment of any such director or person acting, or that they or any of them were disqualified or had never been qualified, valid as if every such person had been duly appointed and was qualified to be a director.
28. A resolution in writing, signed by all the directors (or by their alternates or substitutes) for the time being on and from the date the last person signs the resolution is valid and effectual as if it has been passed at a meeting of the directors duly convened and held. Any such resolution may consist of several documents in like form, each signed by 1 or more directors.

MANAGING DIRECTORS

29. The directors may appoint 1 or more of their body to the office of managing director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke the appointment but the appointment must be automatically determined if the appointee ceases from any cause to be a director.
30. A managing director must, subject to the terms of any agreement entered into in any particular case, and subject to confirmation by the holder of the founder's rights certificate, receive such remuneration as the directors may determine.
31. The directors may entrust to and confer upon a managing director any and all of the powers exercisable by them board upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers, and may revoke, withdraw, alter or vary all or any of those powers.
32. Persons dealing with a managing director and having no notice of the terms and conditions and restrictions of his or her appointment may assume without enquiry that he or she is able to bind the company by his or her sole act.

SECRETARY

33. A secretary must, in accordance with the Act, be appointed by the directors for such term, and upon such conditions and for

such remuneration as the directors and the secretary agree. Where more than 1 secretary is appointed the directors may, subject to the Act, fix their respective duties and functions. Any secretary may be removed by the directors subject to the provisions of the Act.

SEAL

34. The directors must provide for the safe custody of the seal, which must be used only by the authority of the directors or of a committee of the directors authorized by the directors in that behalf, and every instrument to which the seal is affixed must be signed by or on behalf of a director or by some other person appointed by the directors for the purpose. The directors must provide for the safe custody of all other seals and determine the persons by whom each such other seal is to be affixed.

ACCOUNTS

35. The directors must cause proper accounting and other records to be kept and must distribute copies of profit and loss accounts, balance-sheets and such other statements or documents as required by the Act.

DISTRIBUTIONS AND RESERVES

36. The directors may resolve to make distributions to Charity in accordance with the Act, as appear to the directors to be justified by the earned or capital surplus of the company.
37. The directors must, before determining whether to make any distribution, set aside such sums as they think proper as reserves which are, at the discretion of the directors, applicable for any business purpose of the company and pending any such application may be invested in such investments as the directors may think fit. The directors may also without placing the same to reserve carry forward any earned surplus which they may think prudent not to distribute.
38. Any distribution may be paid wholly or partly in cash or by the distribution of specific assets of the company or in any one (1) or more of such ways and, where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and fix the value for distribution of such specified assets or any part thereof and may determine that cash

payments be made to any charity upon the footing of the value so fixed; and they may vest any such specific assets in trustees as may seem expedient to them.

39. Any distributions, interest or other money payable in cash by a company may be paid by cheque or warrant sent through the post directed to the registered address of the intended recipient or to such person and to such address as the person may in writing direct. Every such cheque or warrant must be made payable to the order of the person to whom it is sent unless the intended recipient directs that it be made payable to bearer or otherwise.
40. A notice (including of any meeting) may be given by the company to any person by sending it by post to him or her at his or her registered address, and where a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying and posting, by airmail if the address is outside Samoa, a letter containing the notice and to have been effected 10 days after the date of its posting.
41. A person being or having been a director, managing director, agent, auditor, secretary and other officer of the company must be indemnified out of the assets of the company against any liability arising to him or her in regard to the business of the company or holding office of the company other than arising from his or her own wilful default.

TABLE B
(Section 16)

FOUNDER'S RIGHTS CERTIFICATE

This Founder's Rights Certificate, being numbered [FRC []], is issued by and in respect of:

[Name of Company] Company

Number: []

On: [Date of Issue]

To: [Name of Trustee Company]

entitles the holder to exercise all those rights of the holder of a current founder's rights certificate pursuant to the Special Purpose International Companies Act 2012 and to the articles of the issuer and to exercise the following specific rights or powers as may be granted to a holder pursuant to the Act:

[list, if any]

Executed the day and year above stated.

REVISION NOTES 2014 – 2019

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division in 2014 – 2019 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) 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) "pursuant to" changed to "under"
 - (iii) Numbers in words changed to figures
 - (iv) "any" changed to "a" or "an" where appropriate
 - (v) References to the "International Trusts Act 1988" and "Prevention and Suppression of Terrorism Act 2002" substituted with the "Trusts Act 2014" and "Counter Terrorism Act 2014" respectively.
 - (vi) Subsections with paragraph numbering are renumbered as subsections, e.g. 41(3)(a) and (b) are now (3) and (3A).
 - (vii) Reference to "said" deleted.
- (e) Parts in Roman numerals changed to decimal numbers.

The following amendments were made to this Act since its enactment:

By the Trusts Act 2014, No.8:

- Section 6(2) – substituted "trusts registered under the International Trusts Act 1988" with "foreign trusts"

By the International Companies Amendment Act 2014, No.9:

- Section 58 – deleted subsection (1) and substituted.

By the Tax Information Exchange Amendment Act 2015 by inserting new section 147(8).



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Samoa International Finance Authority.*
