

**INTERNATIONAL PARTNERSHIP AND LIMITED  
PARTNERSHIP AMENDMENT BILL 2016**

**SAMOA**

**Explanatory Memorandum**

**1.0 Object and reasons:**

1.1 The Bill seeks to amend the International Partnership and Limited Partnership Act 1998 (“principal Act”).

1.2 The objects of the Bill are:

- (a) to provide for the use of limited partnership by Samoan residents;
- (b) to provide for the use of international partnership and limited partnership for business and investment; and
- (c) to provide for the use of foreign characters in firm names.

**Clauses:**

**Clause 1:** - states that, when enacted, the Bill will be called the International Partnership and Limited Partnership Amendment Act 2016 (“Act”), and will commence on the date of assent by the Head of State.


**Clause 2:** - amends section 2 of the principal Act by; inserting new definitions for “beneficial owner” and “ultimate beneficial owner”; and substituting the definition of “international partnership or limited partnership” with “international

partnership” and “limited partnership”; and amending the definition of “partnership”.

- Clause 3:** - amends section 5 of the principal Act to authorise an international partnership or limited partnership to be formed for any lawful purposes whether for the carrying on of business or for the making of investment; and ensure that limited partnership is available to Samoan residents as it is to foreign residents.
- Clause 4:** - substitutes section 8 of the principal Act to provide for the meaning of “international partnership”.
- Clause 5:** - amends section 17 of the principal Act to provide that the firm name of a limited partnership may include the use of “foreign characters” and insert “or investment” in paragraph (b) of subsection (1).
- Clause 6:** - amends section 19 of the principal Act to include investments in the modification of partnership laws in the case of limited partnerships.
- Clause 7:** - substitutes section 21 of the principal Act to provide for the registration of a partnership as a limited partnership, removing the non-resident requirement for a partner and the requirement that one of the general partners be either an international company, foreign company or a trustee company.
- Clause 8:** - amends section 23 of the principal Act to include investments for certificate to be signed by general partner.
- Clause 9:** - amends section 28(1) of the principal Act to include investments of the firm assumed and continued under the proviso to subsection (4).
- Clause 10:** - amends section 29 of the principal Act to include making of any investment.
- Clause 11:** - substitutes section 36 of the principal Act to provide for exemption from taxation, duties and returns of any income, profit or gain with a source outside of Samoa and

attributable to the partners of an international partnership or limited partnership in Samoa.

- Clause 12:** - repeal sections 37 and 38 of the principal Act.
- Clause 13:** - amends section 39 of the principal Act to include the making of investments.
- Clause 14:** - amends section 41 of the principal Act by substituting subsection (2) to accept partnership agreements in other languages but to be accompanied by an English translation.
- Clause 15:** - provides consequential amendments to Part A of Schedule 2 of the Income Tax Act 2012 to provide tax exemptions.

  
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(Hon SILI Epa Tuioti)

**MINISTER RESPONSIBLE FOR THE SAMOA**  
**INTERNATIONAL FINANCE AUTHORITY**

**INTERNATIONAL PARTNERSHIP AND LIMITED  
PARTNERSHIP AMENDMENT BILL 2016**

**SAMOA**

**Arrangement of Provisions**

1. Short title and commencement
  2. Section 2 amended
  3. Section 5 amended
  4. Section 8 substituted
  5. Section 17 amended
  6. Section 19 amended
  7. Section 21 substituted
  8. Section 23 amended
  9. Section 28 amended
  10. Section 29 amended
  11. Section 36 substituted
  12. Sections 37 and 38 repealed
  13. Section 39 amended
  14. Section 41 amended
  15. Consequential amendment
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2016, No.

**A BILL INTITULED**

**AN ACT to amend the International Partnership and Limited Partnership Act 1998.**

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

**1. Short title and commencement:**

- (1) This Act may be cited as the International Partnership and Limited Partnership Amendment Act 2016.
- (2) This Act commences on the date of assent.

**2. Section 2 amended:**

In section 2(1) of the principal Act:

- (a) insert the following definitions:

**“beneficial owner”** means a person:

- (a) to whom specific rights, whether of use or title, in any property in equity belong; or
- (b) who may benefit from the exercise of a power which may grant the person any property or the use of the property, even though the legal title is registered or vested in another person.

**“ultimate beneficial owner”** means the person who:

- (a) is the final beneficial owner where specific rights, whether of use or title, in any property in equity are; or

(b) may benefit from the exercise of a power which may grant the person any property or the use of the property, is, subject in equity to more than one trust;”;

(b) for the definition of “international partnership or limited partnership” substitute:

““**international partnership**” has the meaning under section 8;

“**limited partnership**” has the meaning under section 15;”;

(c) for the definition of “partnership”, after “with a view to profit” insert “or to provide for investment”.

### 3. **Section 5 amended:**

In section 5 of the principal Act:

(a) for the section heading, substitute “**Permitted business and investment**”;

(b) for subsection (1), after “formed for any lawful purposes” insert “(whether for the carrying on of business or for the making of investment)”;

(c) for subsection (2), paragraphs (e) and (f) are repealed;

(d) after subsection (2) insert:

“(2A) An international partnership or limited partnership shall not:

(a) carry on banking or trust business, unless the partnership is licensed under an enactment authorising it to carry on the banking or trust business; or

- (b) carry on business as an insurance or re-insurance company or insurance manager, unless the partnership is licensed under the Insurance Act 2007.”; and
- (e) for subsections (2), (3), (4) and (5), delete “or limited partnership” wherever it appears in those subsections.

**4. Section 8 substituted:**

For section 8 of the principal Act, substitute:

**“8. Meaning of “international partnership”:**

In this Act, “international partnership” means a partnership that is registered under this Act and in respect of which:

- (a) all of the partners are at all times non-resident;
- (b) the partnership does not carry on trade or engage in business in Samoa; and
- (c) one of its partners is either -
  - (i) an international company; or
  - (ii) a foreign company; or
  - (iii) a trustee company.”.

**5. Section 17 amended:**

In section 17 of the principal Act:

- (a) for subsection (1), after “thereof” insert “or foreign characters”; and
- (b) for paragraph (b) of the proviso to subsection (1), after “any particular type or class of business” insert “or investment”.

**6. Section 19 amended:**

For section 19 of the principal Act:

- (a) in subsections (1), (2) and (3), after “management of the business” insert “or investment” where it appears in those subsections;
- (b) in subsection (3)(f) -
  - (i) for subparagraph (iv), after “business” insert “or investments”;
  - (ii) for subparagraph (v), after “the continuation of the business” insert “and investment”;
- (c) in subsection (4), after “in the business” insert “or investment”;
- (d) in subsection (5), for “or unless the business of the firm is assumed and continued under the proviso to section 28(4)” substitute “or unless the business and the investment of the firm are assumed and continued under the proviso to section 28(4)”; and
- (e) in subsection (6), for paragraph (b), after “matters connected with the business” insert “or the investment”.

**7. Section 21 substituted:**

For section 21 of the principal Act substitute:

**“21. Registration:**

The Registrar must not register a partnership as a limited partnership unless the Registrar has received a certificate completed by a trustee company certifying that, upon registration, the limited partnership will consist of one (1) or more general partners and one or more limited partners.”.



**8. Section 23 amended:**

In section 23 of the principal Act, for subsection (1):

- (a) after “before commencement of business” insert “or investment”;
- (b) in paragraph (d), after “business” insert “(including investment)”;  
and
- (c) in paragraph (e), for “the business” substitute “the business or investment”.

**9. Section 28 amended:**

In section 28(1) of the principal Act, for “unless the business of the firm is assumed and continued under the proviso to subsection (4)” substitute “unless the business and the investments of the firm are assumed and continued under the proviso to subsection (4)”.

**10. Section 29 amended:**

For section 29 of the principal Act, after “transact any other business” insert “(including making any investment)”.

**11. Section 36 substituted:**

For section 36 of the principal Act, substitute:

**“36. Exemption from taxation, duties and returns:**

Any income, profit or gain (with a source outside Samoa and attributable to the partners of an international partnership or limited partnership) is not taxable in Samoa if:

- (a) the beneficial owner or ultimate beneficial owner of the 95% or more interest of a limited partner in a limited partnership is the trustee of a “foreign benefitting trust”, as defined in the Trusts Act 2014;

- (b) a partner is a person not resident in Samoa;
- (c) a partner is a Samoan international company, the beneficial owner or owners of which or the ultimate beneficial owner or beneficial owners of which is a person or are persons not resident in Samoa; or
- (d) the beneficial owner or the ultimate beneficial owner of the 95% or more interest of a limited partner in a limited partnership is a foundation under any legislation regulating foundations in Samoa.”.

**12. Sections 37 and 38 repealed:**

Sections 37 and 38 of the principal Act are repealed.

**13. Section 39 amended:**

For section 39 of the principal Act:

- (a) in the section heading, for “**Secrecy**” substitute “**Confidentiality**”;
- (b) in subsection (1), after “business undertakings” insert “, investments”; and
- (c) in subsection (3) -
  - (i) for paragraph (c), after “the business” insert “or the making of investments”; and
  - (ii) for the proviso, for “phrase “carrying on the business of the firm” does not include”, substitute, “phrase “carrying on the business” does not include”.

**14. Section 41 amended:**

In section 41 of the principal Act, for subsection (2) substitute:

- “(2) As an exception to subsection (1), a partnership agreement and any document ancillary or supplemental (“document”) to the agreement are valid under the laws of Samoa in a language other than English, as they would be in English.
- (2A) For the purposes of subsection (2):
- (a) the agreement and the document are to be accompanied by a certified English translation;
  - (b) copies of the agreement or document are to be retained at the registered office of the partnership;
  - (c) if required, copies of the agreement or document are to be filed with the Registrar; and
  - (d) if there is a conflict in meaning between the foreign language version and the English version of the agreement or the document, the English version prevails.”.

**15. Consequential amendment:**

For Part A of Schedule 2 of the Income Tax Act 2012:

- (a) in subsection (1), insert:
- “(ze) any income, profit or gain (with a source outside Samoa and attributable to the partners of an international partnership or limited partnership) under section 36 of the International Partnership and Limited Partnership Act 1998.”;
- (b) in subsection (2), insert:
- ““international partnership” has the meaning under section 8 of the International Partnership and Limited Partnership Act 1998;

“limited partnership” has the meaning under section 15 of the International Partnership and Limited Partnership Act 1998.”

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