

INTERNATIONAL COMPANIES AMENDMENT BILL 2015

SAMOA

Explanatory Memorandum

Introduction

The Bill seeks to amend the International Companies Act 1988 (“Act”) to address the deficiencies identified in Samoa’s Phase 1 Peer Review Report under the Organisation for Economic Co-operation (OECD) and Development Global Forums peer review mechanism that took place in September 2012 and during Samoa’s Phase 2 Peer Review conducted in December 2014. The amendments will ensure Samoa’s compliance with OECD standards. The objectives of the bill are as follows:

- (a) eliminate the issuing of bearer shares;
- (b) require an international company to keep accounting records and the type of information required to be kept; and
- (c) provide consequential amendments to the Special Purpose International Companies Act 2012, International Partnership and Limited Partnership Act 1998 and Trusts Act 2014 to reflect amendments in relation to keeping of accounting records.

Clauses:

Clause 1: - states that, when enacted, the Bill will be called the International Companies Amendment Act 2015, and will commence on the date it is assented to by the Head of State.

Clause 2: - amends sections 39 and 39A of the Act.

Clause 3: - amends section 113 of the Act.

Clause 4: - provides for the consequential amendments to the Special Purpose International Companies Act 2012, International Partnership and Limited Partnership Act 1998 and Trusts Act 2014.



A handwritten signature in black ink, appearing to read 'Neioti Sailele Malielegaoi', is written above a horizontal dotted line.

(Hon TUILAEPFA Fatialofa Lupesoliai Aiono
Neioti Sailele Malielegaoi)

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

**INTERNATIONAL COMPANIES
AMENDMENT BILL 2015**

SAMOA

Arrangement of Provisions

1. Short title and commencement
2. Sections 39 and 39A amended
3. Section 113 amended
4. Consequential amendments

2015, No.

A BILL INTITULED

**AN ACT to amend the International Companies Act 1988
("principal Act").**

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

1. Short title and commencement-(1) This Act may be cited as
the International Companies Amendment Act 2015.

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

2. Sections 39 and 39A amended - For sections 39 and 39A of
the principal Act substitute:

"39. Bearer shares and share warrants - A memorandum of
a company that had issued bearer shares prior to the International
Companies Amendment Act 2014 ("grandfather bearer share

company”) is deemed to be amended from effect from 27 January 2014 to state that the company is not authorised to issue bearer shares or share warrants to a bearer, convert registered shares; and with effect from that date, the company shall cease to be a bearer share company.

39A. Transitional provision-(1) Any bearer shares or share warrants that have been issued by an international company to a bearer prior to 27 January 2014 shall continue for a period of 12 months from the commencement of the International Companies Amendment Act 2014 and thereafter shall cease to be a bearer share or share warrants.

(2) The rights in these bearer shares or share warrants must be converted into registered shares within six (6) months from the commencement of the International Companies Amendment Act 2015. Any shares, warrants and the rights attached thereto that are not converted within this period are cancelled by operation of law.”.

3. Section 113 amended - For section 113(1) of the principal Act substitute:

“(1) An international company must keep accounting records and such records should:

- (a) correctly explain all transactions;
- (b) enable the financial position of the international company to be determined with reasonable accuracy at any time;
- (c) enable the directors to check that any accounts prepared by the international company under this part complies with the requirements of this Act;
- (d) allow financial statements to be prepared;
- (e) include underlying documentation, such as invoices, contracts and so forth;
- (f) reflect the following details -
 - (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
 - (ii) all sales and purchases and other transactions; and
 - (iii) the assets and liabilities of the relevant entity or arrangement.

(1A) An international company must retain all the accounts and records referred to in subsection (1) for seven (7) years after the end of the financial year or accounting period to which they relate.

(1B) An international company that contravenes or fails to comply with subsection (1) or (1A) commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.”.

4. Consequential amendments-(1) In section 58(1) of the Special Purpose International Companies Act 2012, substitute:

“(1) A company must keep accounting records and such records should:

- (a) correctly explain all transactions;
- (b) enable the financial position of the company to be determined with reasonable accuracy at any time;
- (c) enable the directors to check that any accounts prepared by the company under this part complies with the requirements of this Act;
- (d) allow financial statements to be prepared;
- (e) include underlying documentation, such as invoices, contracts and so forth;
- (f) reflect the following details -
 - (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
 - (ii) all sales and purchases and other transactions; and
 - (iii) the assets and liabilities of the relevant company.

(1A) A company must retain all the accounts and records referred to in subsection (1) for seven (7) years after the end of the financial year or accounting period to which they relate.

(1B) A company that contravenes or fails to comply with subsection (1) or (1A) commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.”.

(2) In section 46(1) of the International Partnership and Limited Partnership Act 1998, substitute:

“(1) An international partnership or limited partnership must keep accounting records and such records should:

- (a) correctly explain all transactions;

- (b) enable the financial position of the international partnership or limited partnership to be determined with reasonable accuracy at any time;
- (c) enable the directors to check that any accounts prepared by the international partnership and limited partnership under this part complies with the requirements of this Act;
- (d) allow financial statements to be prepared;
- (e) include underlying documentation, such as invoices, contracts and so forth;
- (f) reflect the following details -
 - (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
 - (ii) all sales and purchases and other transactions; and
 - (iii) the assets and liabilities of the relevant international partnership and limited partnership.

(1A) An international partnership or limited partnership must retain all the accounts and records referred to in subsection (1) for seven (7) years after the end of the financial year or accounting period to which they relate.

(1B) A company that contravenes or fails to comply with subsection (1) or (1A) commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.”.

(3) After section 79 of the Trusts Act 2014, insert:

“79A. Accounts to be kept-(1) A Samoan trustee for a foreign trust must keep accounting records and such records should:

- (a) correctly explain all transactions;
- (b) enable the financial position of the foreign trust to be determined with reasonable accuracy at any time;
- (c) allow financial statements to be prepared;
- (d) include underlying documentation, such as invoices, contracts and so forth;
- (e) reflect the following details -
 - (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;

(ii) all sales and purchases and other transactions; and

(iii) the assets and liabilities of the foreign trust.

(2) A Samoan trustee for a foreign trust must retain all the accounts and records referred to in subsection (1) for seven (7) years after the end of the financial year or accounting period to which they relate.

(3) A Samoan trustee for a foreign trust who contravenes or fails to comply with subsection (1) or (2) commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.”.
