



SAMOA

INTERNATIONAL PARTNERSHIP AND LIMITED PARTNERSHIP ACT 1998

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**INTERNATIONAL PARTNERSHIP AND LIMITED
PARTNERSHIP ACT 1998**

1998

No. 27

AN ACT to provide for International Partnerships and Limited Partnerships.

[Assent date: 16 July 1998]

[Commencement date: 17 July 1998]

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 International Partnership and Limited Partnership Act 1998.

(2) This Act comes into force on the day after the date of assent (in this Act referred to as the commencement date).

(3) A reference in this Act to an enactment is, unless the context otherwise requires, a reference to that enactment as amended, extended, re-enacted, or applied by or under any other enactment, including this Act.

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

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

“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;

“contribution” means the cash, property or other assets which a partner contributes to the capital of an international partnership or limited partnership; but does not include any monies lent by a partner to the partnership or firm;

“Court” means the Supreme Court of Samoa or a Judge thereof;

“dollar” or “\$” means a dollar in the currency of the United States of America;

“firm” means the collective entity of persons who have entered into partnership with one another under this Act;

“firm name” means the name under which a firm is registered under Part 4 and under which its business is carried on;

“foreign company” means a foreign company registered under the International Companies Act 1988;

“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;

“instrument” includes any deed, contract, agreement or arrangement evidenced in writing;

“international company” means a company incorporated or registered under the International Companies Act 1988;

“international partnership” has the meaning under section

8;

“limited Partnership” has the meaning under section 15;

“Minister” means the Minister responsible for Finance;

“non-resident” means a person not ordinarily resident in and not domiciled in Samoa who does not engage in a trade or business in Samoa, but does include a company incorporated or registered under the International Companies Act and a trustee company registered under the Trustee Companies Act 1988;

“partnership” means a partnership, joint venture, syndicate or association entered into for the purpose of carrying on a business or a single transaction with a view to a profit or to provide for investment and evidenced by an instrument but does not include:

(a) a joint venture of trustees where that joint venture relates only to a common fund for mixing of trustees’ funds;

(b) a company;

(c) a corporation sole;

“partnership agreement” means an agreement of the partners which provides for the establishment of and regulates the affairs of a firm, the conduct of its business and the rights and obligations of the partners amongst themselves;

“partnership interest” means the interest of a partner in a firm in respect of profit, capital and voting or other rights, benefits or obligations to which he or she is entitled or subject pursuant to the partnership agreement or this Act;

“prescribed” means prescribed by regulations or in the absence of such regulations as may be determined by the Registrar;

“Registrar” means the Registrar of International Partnerships and includes a Deputy or Assistant Registrar;

“representative trustee company” means the trustee company who provides the registered office for the international partnership or limited partnership;

“securities” include 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;

“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;

“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.

(2) A reference in this Act to a person in gender neutral terms shall, unless the context otherwise indicates, include a reference to a partnership or company.

3. Saving of existing laws – The rules of common law and equity applicable to partnership as modified by the Partnership Act 1975 apply to international partnerships and limited partnerships except in so far as they are inconsistent with any of the express provisions of this Act.

4. Application of this Act – Unless otherwise provided, this Act only applies to international partnerships and limited partnerships and an instrument relating to an international partnership or limited partnership whether executed or entered into before, on or after the commencement of this Act.

5. Permitted business and investment – (1) An international partnership or limited partnership may be formed for any lawful purposes (whether for carrying on of business or for the making of investment) to be carried out and undertaken either in or from within Samoa or elsewhere upon the terms, with the rights and powers, and subject to the conditions, limitations, restrictions and liabilities mentioned in the Act and subject thereto, as provided in the partnership agreement.

(2) No international partnership shall:

(a) carry on business or engage in a trade with or

acquire any assets from —

- (i) any natural person ordinarily resident or domiciled in Samoa; or
- (ii) any domestic company that is not a trustee company;
- (b) own an interest in land or real estate situated in Samoa other than a lease referred to in subsection (3)(e);
- (c) make a disposition to or grant or settle any property (including securities) on —
 - (i) a natural person ordinarily resident or domiciled in Samoa; or
 - (ii) a domestic company which is not a trustee company;
- (d) make a disposition or grant or settle any property outside Samoa in the currency of Samoa;
- (e) *(Repealed by the International Partnership and Limited Partnership Amendment Act 2016, No.5);*
- (f) *(Repealed by the International Partnership and Limited Partnership Amendment Act 2016, No.19).*

(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.

(3) For the purposes of subsection (2)(a), an international partnership shall not be treated as carrying on business in Samoa by reason only that:

- (a) it makes or maintains deposits with a company carrying on banking business in or from within Samoa;
- (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;
- (c) it prepares or maintains books and records within Samoa;

- (d) it holds meetings of its partners or limited partners in or from within Samoa;
- (e) it holds a lease of property in Samoa for use as an office that it has established where the books and records of the international partnership are prepared;
- (f) it holds shares, debentures, or other securities in another company incorporated or registered under the International Companies Act 1988.

(4) An international partnership that contravenes subsection (2), commits an offence and is liable on conviction to a fine not exceeding 10 penalty units for every day that the offence has continued and a partner of an international partnership who knowingly permits the contravention commits the same offence and is liable upon conviction to a like fine or to imprisonment for a term not exceeding 1 year.

(5) It is an offence for an international partnership 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 or domiciled in Samoa or by a domestic company which is not a trustee company.

6. Registrar of international partnerships – (1) The Registrar of international and foreign companies appointed pursuant to the International Companies Act 1988 is the Registrar of international partnerships.

(2) A Deputy Registrar of International and Foreign Companies or other officer appointed pursuant to the International Companies Act 1988 is a Deputy Registrar of international partnerships or other officer, as the case may be, for the purposes of this Act.

(3) Anything authorised or required to be done by the Registrar under this Act may be authorised or done by a Deputy or Assistant Registrar.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal and also the signature of the Registrar and of any Deputy or Assistant Registrar.

(5) There shall be paid to the Registrar such fees as are prescribed.

7. Registers – (1) The Registrar shall, subject to this Act and regulations made under it, keep such registers and records as the Registrar considers necessary and in such form as the Registrar thinks fit.

(2) The register shall not be open to inspection except that the representative trustee company or the international partnership or limited partnership may in writing authorise a person to inspect the entry of that international partnership or limited partnership in the register.

PART 2

INTERNATIONAL PARTNERSHIPS

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.

9. Application for registration – Application for registration of a partnership as an international partnership under this Act is to be made to the Registrar through a trustee company in the prescribed form and accompanied by the prescribed fee.

10. Registration – No partnership is to be registered as an international partnership unless the Registrar has received a certificate completed by a trustee company certifying that:

- (a) one of the partners is either —
 - (i) an international company; or
 - (ii) a foreign company; or
 - (iii) a trustee company; and
- (b) each partner is a non-resident.

11. Registration of partnership agreement – The firm or a partner in the firm may provide the Registrar with a copy of the partnership agreement or any amendment thereto which shall be certified in the manner prescribed and the Registrar shall register that copy as a true copy and file the same.

12. Registered office – (1) An international partnership shall have a registered office in Samoa that is the principal office of a trustee company.

(2) The address for service of any documents upon an international partnership is the registered office of that partnership.

(3) Trustee companies shall display at their principal office in a conspicuous position and in letters easily legible the names of such international partnerships as have their registered office at their address.

13. Proceedings – Where any proceedings are instituted by or against an international partnership it is sufficient to name the international company, foreign company or trustee company which is a partner and it shall not be necessary to join in the action any other partner.

14. Firm name – (1) An international partnership shall have a firm name that may include the name of any partner or a derivation thereof:

PROVIDED THAT no international partnership shall have a firm name which is calculated to mislead, whether because:

- (a) it is identical or similar to the name of any other entity; or
- (b) it falsely suggests the patronage of or a connection with some particular person or authority; or
- (c) it suggests that the firm is licensed whether in Samoa or elsewhere to carry on any particular type or class of business when it is not in fact so licensed; or
- (d) of any other good and sufficient reason.

(2) The Registrar may refuse to accept the registration of an international partnership or the registration of a change of name of an international partnership and refuse to issue a certificate of

registration in a case where in the Registrar's opinion the name of the proposed firm is in contravention of subsection (1).

PART 3 LIMITED PARTNERSHIPS

15. Limited partnerships – For the purposes of this Act, a limited partnership means a limited partnership registered pursuant to Part 4.

16. Constitution of limited partnership – (1) A limited partnership shall consist of 1 or more persons called general partners who are:

- (a) in the event that the assets of the firm are inadequate, liable for all its debts and obligations, and 1 or more persons called limited partners who shall at the time of entering into such partnership contribute a sum or sums as capital or property valued at a stated amount; and
- (b) not liable for the debts or obligations of the firm save as provided in the partnership agreement and to the extent specified in sections 19 and 26:

PROVIDED THAT a general partner, without derogation from his or her status as such, may also take an interest in the same firm as a limited partner.

(2) A general partner shall act at all times in good faith in the interests of the firm.

(3) A body corporate with or without limited liability and a partnership may be a general or a limited partner.

(4) A property of a firm which is conveyed into or vested in or held by or on behalf of any 1 or more of its general partners or which is conveyed into or held in the firm name is held or deemed to be held by the general partner and, if more than 1 then by the general partners jointly and severally, upon trust as an asset of the firm in accordance with the terms of the partnership agreement.

(5) A debt or obligation incurred by a general partner in the course or conduct of the business of a firm is a debt or obligation of that firm.

17. Firm name – (1) A limited partnership shall have a firm name which shall include the word "Limited Partnership"

or the letters “L.P.” at the end of the firm name, and the firm name may include the name of a general partner or limited partner or a derivation thereof or foreign characters:

PROVIDED THAT no limited partnership shall have a firm name which, whether because:

- (a) it is identical or similar to the name of any other entity, or because it falsely suggests the patronage of or a connection with some particular person or authority; or
- (b) it suggests that the firm is licensed whether in Samoa or elsewhere to carry on any particular type or class of business or investment when it is not in fact so licensed; or
- (c) of any other good and sufficient reason, is calculated to mislead.

(2) The Registrar may refuse to accept the registration of a limited partnership or the registration of a change of name of a limited partnership and refuse to issue a certificate of registration in any case where in his or her opinion the name of the proposed firm is in contravention of subsection (1).

18. Registered office – (1) A limited partnership shall have a registered office in Samoa that is the principal office of a trustee company.

(2) The address for service of any documents upon a limited partnership is the registered office of that partnership.

(3) Trustee companies shall display at their principal office in a conspicuous position and in letters easily legible the names of such limited partnerships as have their registered office at their address.

19. Modification of partnership laws in the case of limited partnerships – (1) A limited partner shall take no part in the management of the business or investment of a limited partnership and all letters, contracts, deeds, instruments or documents whatsoever is entered into by 1 or more general partners on behalf of the firm concerned.

(2) If a limited partner takes part in the management of the business or investment of a firm in its dealing with persons who are not partners, that limited partner is liable in the event of insolvency of the firm, for all its debts and obligations incurred during the period that he or she so participates in the

management of its business, as though he or she were for such period a general partner:

PROVIDED THAT he or she is so liable only to a person who transacted business with the firm under a genuine and reasonable belief that such limited partner was a general partner.

(3) A limited partner does not take part in the management of the business or investment of a firm in terms of this section merely by doing 1 or more of the following acts:

- (a) being a contractor for or agent or employee of the firm or of a general partner, or acting as a director, officer or shareholder of a corporate general partner;
- (b) consulting with and advising a general partner with respect to the business of the firm;
- (c) investigating, reviewing, approving or being advised as to the accounts or business affairs of the firm or exercising any right conferred upon him or her by this Act;
- (d) acting as surety or guarantor for the firm either generally or in respect of specific obligations;
- (e) approving or disapproving an amendment to the partnership agreement; or
- (f) voting as a limited partner in accordance with the partnership agreement on 1 or more of the following matters —
 - (i) the dissolution and winding up of the firm;
 - (ii) the purchase, sale, exchange, lease, mortgage, pledge, or other acquisition or transfer of any asset by or of the firm;
 - (iii) the incurring or renewal of indebtedness by the firm;
 - (iv) a change in the nature of the firm's business or investments;
 - (v) the admission, removal or withdrawal of a general or limited partner and the continuation of the business and investment of the firm thereafter;
 - (vi) transactions in which 1 or more of the general partners have an actual or potential conflict of interest with the firm or with one or more of the limited partners.

(4) Subsection (3) shall not import any implication that the possession or exercise of any other power by a limited partner will necessarily constitute the taking part by such limited partner in the business or investment of the firm.

(5) In the event of the dissolution of a firm, its affairs are to be wound-up by the general partner unless the court otherwise orders on the application of a partner or creditor of the firm pursuant to section 28(3) or unless the business and the investment of the firm are assumed and continued under the proviso to section 28(4).

(6) Subject to an express or implied term of the partnership agreement to the contrary and to section 28(4):

- (a) a firm shall not be dissolved or its existence terminated by —
 - (i) a change in any 1 or more of the general partners or the limited partners;
 - (ii) the assignment of the whole or part of the partnership interest of a limited partnership;
 - (iii) the death, bankruptcy, dissolution or winding-up of a limited partner;
 - (iv) the incapacity of a limited partner;
 - (v) the granting by any 1 or more of the limited partners of a mortgage, charge or other form of security interest over the whole or part of his or her partnership interest;
 - (vi) the sale, exchange, lease, mortgage, pledge or other transfer of any of the assets of the firm;
- (b) a difference arising as to matters connected with the business or the investment of the firm is decided by the general partner or, if more than 1, by a majority in interest of the general partners;
- (c) a person may with the consent of the general partner, and if by assignment, in accordance with section (7), become a limited partner without the consent of the existing limited partners;
- (d) a limited partner is not entitled to dissolve the partnership by notice.

(7) No limited partner may, save with the prior written consent of at least one general partner which may be withheld in the sole discretion of such general partner notwithstanding any

express or implied term of the partnership agreement to the contrary, assign either absolutely or by way of mortgage the whole or any part of his or her partnership interest but, subject to such consent, an assignee shall, to the extent of such assignment, become a limited partner with the rights and subject to the obligations of the assignor (and, subject as set forth below wholly or partly in place of and to the exclusion of the assignor as the case may be) in accordance with the partnership agreement and this Act in respect of the partnership interest or part thereof assigned:

PROVIDED THAT:

- (a) the assignee shall not assume a liability of the assignor or arising pursuant to subsection (2) or section 27(2); and
- (b) despite a term of the partnership agreement or any other agreement to the contrary, no such assignment shall relieve the assignor of any liability arising pursuant to such subsections.

(7A) Subject to subsection (7), a limited partner may mortgage the whole or a part of his or her partnership interest and the mortgagee shall serve written notice at the address of the registered office of the limited partnership of the mortgage together with a copy thereof and signed by the mortgagor and the mortgagee and pay such fee, if any, as may be provided in the partnership agreement, and the general partner shall maintain or cause to be maintained at the registered office in writing a register of mortgages indicating the identity of the mortgagor and mortgagee, the date of creation of the mortgage, the partnership interest or part thereof subject thereto and the date of receipt of such notice.

(7B) A mortgage of the whole or a part of a partnership interest shall have priority according to the date of service of written notice at the registered office described in subsection (7A).

(7C) If default is made by a general partner in the maintenance of the register described in subsection (7A) each general partner in default upon summary conviction incurs a penalty of 2.5 penalty units for each day that such default continues.

20. Application for registration – (1) Application for registration of a partnership as a limited partnership under this

Act is to be made to the Registrar through a trustee company in the prescribed form and accompanied by the prescribed fee.

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.

22. Registration of partnership agreement – The firm or a partner in the firm may provide the Registrar with a copy of the partnership agreement or an amendment thereto which is to be certified in the manner prescribed and the Registrar shall register that copy as a true copy and file the same.

23. Certificate to be signed by general partner – (1) After registration of a limited partnership and before commencement of business or investment and immediately after the particulars required by this subsection are changed, a general partner of that limited partnership shall complete a certificate containing the following particulars, namely:

- (a) the firm name under which the limited partnership is to be conducted;
- (b) the names and addresses of all the partners, distinguishing the general partners from the limited partners;
- (c) the amount of capital which each limited partner is to contribute and also the amount, if any, contributed by the general partners;
- (d) the general nature of the business (including investment) to be transacted;
- (e) the principal or only place in which the business or investment is to be transacted;
- (f) the term, if any, for which the limited partnership is entered into or, if for an unlimited duration, a statement to that effect and the date of its commencement.

(2) A certificate signed under this section may be filed with the Registrar who shall register the same.

(3) If default is made in compliance with the requirements of subsection (1), each general partner in default commits an offence and upon summary conviction incurs a fine of 2.5 penalty units for each day during which such offence continues, and shall indemnify a person who thereby suffers any loss.

24. Partners to be liable as general partners for false statements in certificate – If a false statement is made in a certificate referred to in section 23, all the persons interested in the limited partnership are liable as general partners:

PROVIDED THAT no clerical error or matter not of substance is deemed false within the meaning of this section unless some person is prejudiced thereby, in which case the limited partners are liable to the person so prejudiced.

25. Right to an account – Subject to an express or implied term of the partnership agreement to the contrary, each limited partner may demand and shall receive from any general partner true and full information regarding the state of the business and financial condition of the firm.

26. Proceedings – (1) Subject to subsection (2), legal proceedings by or against a firm may be instituted by or against any 1 or more of the general partners only and no limited partner is to be a party to or named in such proceedings:

PROVIDED THAT, if the court deems it just and equitable, a general partner or a person has the right to join in or otherwise institute proceedings against 1 or more of the limited partners who may be liable pursuant to section 19(2), or to enforce the return of any contribution repayable under section 27(2).

(2) A limited partner may bring an action on behalf of the firm if 1 or more of the general partners with authority to do so have without good and sufficient cause refused to institute such proceedings.

27. Return of contribution – (1) A limited partner shall not, on dissolution or otherwise, receive out of the capital of the firm a payment representing a return of a part of his or her contribution to the limited partnership unless at the time of such payment the firm is solvent.

(2) Without prejudice to the requirements of subsection (1), a sum received by a limited partner as representing the return of a part of his or her contribution to the capital of the firm is, in the event of the insolvency of the firm at any time within the next following period of 6 months, repayable by such limited partner with simple interest at the rate of 5 % per annum to the extent that such contribution or part thereof is necessary to discharge a debt or obligation of the firm incurred during the period that it represented an asset of the firm.

(3) In this section, “receive” includes the release of an obligation forming part of the capital contribution and, in that context, liability to make repayment pursuant to subsection (2) includes the due performance of any such obligation.

28. Dissolution – (1) In the event of dissolution of a limited partnership, the affairs of the firm are to be wound-up by the general partners unless the business and the investments of the firm are assumed and continued under the proviso to subsection (4).

(2) A firm shall not be dissolved by an act of the partners until a notice of dissolution in the prescribed form signed by a general partner has been filed with the Registrar.

(3) On application by a partner or a creditor the Court may order dissolution of a limited partnership and make any order and give any direction for the winding-up of its affairs, as may be just and equitable.

(4) Despite subsection (2) and any expressed or implied term of the partnership agreement to the contrary, the death, insanity, retirement, bankruptcy, commencement of liquidation proceedings, resignation, insolvency or dissolution of the sole or remaining general partner shall cause the immediate dissolution of the limited partnership, which shall forthwith be wound-up pursuant to the partnership agreement or any order as the Court may make under subsection (3):

PROVIDED THAT, if within 90 days of the date of dissolution the limited partners unanimously elect 1 or more new general partners and if at the date of such election the firm is solvent, this subsection does not operate to require the firm to be wound-up and the limited partnership may be assumed and continued as may be provided for in the partnership agreement or in a new partnership agreement.

29. Transactions by partners with limited partnership –

Subject to an express or implied term of the partnership agreement to the contrary and to the duty imposed upon a general partner by section 16(2), a partner may lend money to, borrow from and transact any other business (including making any investment) in his or her personal capacity with, the firm (so that an asset, debt or obligation of the firm is thereby created) and with or without interest or security as the general partners shall determine, and have the same rights and obligations in respect thereof as a person who is not a partner:

PROVIDED THAT the obligations of the firm to repay debts to a general partner are at all times subordinated to the claims of secured and unsecured creditors of the firm.

PART 4**REGISTRATION OF INTERNATIONAL
PARTNERSHIPS AND LIMITED PARTNERSHIPS**

30. Only registered international partnerships and limited partnerships entitled to benefits – No international partnership or limited partnership is entitled to the privileges and exemptions under Part 5, unless the international partnership or limited partnership is registered under this Act and all renewal, penalty and other fees have been paid to the Registrar.

31. Registration – (1) When the Registrar has accepted an application for registration of an international partnership or limited partnership made in accordance with section 9 or 20, the Registrar shall enter into the register of international partnerships and limited partnerships, the name of the international partnership or limited partnership, the address of its registered office and the date of registration, whereupon the international partnership or limited partnership is deemed to be registered.

(2) Upon registration of an international partnership or limited partnership the Registrar shall issue a certificate of registration in the prescribed form and forward such certificate

to the representative trustee company of the international partnership or limited partnership.

(3) A certificate of registration under the hand and seal of the Registrar is conclusive evidence that all the requirements of this Act in respect of registration and other matters precedent and incidental thereto have been complied with and that the international partnership or limited partnership referred to therein has been duly registered under this Act.

32. Prohibitions by the Authority – (1) The Authority shall have an absolute right of its own motion or otherwise and without assigning any reasons to make an order:

- (a) prohibiting the registration of any partnership as an international partnership or limited partnership;
- (b) directing any international partnership or limited partnership to cease carrying on its business or part of its business immediately or within such time as may be specified in the order.

(2) An order made under this section may be revoked or varied by the Authority.

(3) In making an order under this section, the Authority shall not be required to act judicially, and an order made under subsection (1) is final, except as revoked or varied under subsection (2).

33. Annual renewal fee – (1) An international partnership or limited partnership registered pursuant to section 31, is liable to pay to the Registrar on 30 June of each year, following the year in which it is registered, the annual renewal fee as may be prescribed.

(2) Subsection (1) does not apply to long term international partnerships or long term limited partnerships registered under section 34 during the period of its long term registration.

34. Long term international partnerships or long term limited partnerships – (1) An international partnership or limited partnership may elect to be registered as a long term international partnership or long term limited partnership by paying to the Registrar such long term registration fees and long term renewal fees as may be prescribed.

(2) An international partnership or limited partnership registered under section 31 may elect to be registered as a long term international partnership or long term limited partnership on payment of such long term renewal fees as may be prescribed.

(3) A long term international partnership or long term limited partnership may upon the expiry of a period of long term registration, elect to continue its registration on an annual basis pursuant to section 31.

(4) If upon the day after the expiry of its period of long term registration, a long term international partnership or long term limited partnership fails or has failed to pay either its long term renewal fee or annual renewal fee, it is liable to pay by way of penalty such additional fee or fees as may be prescribed or liable to having its registration revoked pursuant to section 35.

35. Registration may be revoked without appeal – (1)
Registration of an international partnership or limited partnership may be revoked by the Registrar where:

- (a) the international partnership or limited partnership fails to pay its prescribed annual renewal fee, long term renewal fee, or penalty fees;
- (b) a partner of an international partnership or limited partnership that is a trustee company, international company or foreign company ceases to be registered in Samoa;
- (c) the international partnership or limited partnership fails to maintain a registered office in Samoa as required by section 12 or 18;
- (d) the international partnership or limited partnership is in contravention of section 5(2).

(2) Where the Registrar intends to revoke the registration of an international partnership or limited partnership under this section, the Registrar shall:

- (a) give notice of his or her intention to the registered office of the international partnership or limited partnership; and
- (b) allow a reasonable opportunity to show cause why registration of the international partnership or limited partnership, should not be revoked.

(3) The Authority may at the request of the Registrar make an order directing an international partnership or limited partnership to cease to maintain its registered office in Samoa in which event the registration of the international partnership or limited partnership is revoked with effect from 14 days after the date of such order or such later date as may be specified in the order.

(4) When registration is revoked under subsection (1) or (3), the international partnership or limited partnership ceases to be entitled to the privileges and exemptions under Part 5; and the Registrar shall make an entry in the register noting that the registration of the international partnership or limited partnership has been revoked.

(5) The Authority need not assign reasons for making an order under subsection (3) and in making such an order the Authority shall not be required to act judicially, and an order made under subsection (3) is final.

PART 5

PRIVILEGES AND EXEMPTIONS RELATING TO INTERNATIONAL PARTNERSHIPS OR LIMITED PARTNERSHIPS

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.

37. *(Repealed by the International Partnership and Limited Partnership Amendment Act 2016, No.19).*

38. *(Repealed by the International Partnership and Limited Partnership Amendment Act 2016, No.19).*

39. Confidentiality – (1) Except where this Act requires and subject to subsection (2), it is an offence for a person to divulge or communicate to any other person information relating to the establishment, constitution, business undertaking, investment or affairs of an international partnership or limited partnership.

(2) All judicial proceedings, other than criminal proceedings relating to an international partnership or limited partnership is to be, unless ordered otherwise, heard *in camera* and no details of the proceedings shall be published by a person without leave of the Court or Judge presiding.

(3) Despite subsection (1), it is not an offence where such information or communication is divulged to the extent reasonably required in the circumstances:

- (a) by an officer of a trustee company or by a partner of the firm to the Registrar for the purpose of complying with 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 or the Registrar 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 a partner of the firm to any person for the purpose of carrying on the business or the making of investments of the firm:

PROVIDED THAT the phrase “phrase “carrying on the business” does not include” the compliance with any demand or request for information by any foreign government or any Court or tribunals of any country other than Samoa where the divulging of the information will, or is likely to result in the payment of any tax, other penalty or

- any fine by the firm;
- (d) by a partner of the firm to any foreign government or a Court or tribunal of any country other than Samoa but only if and to the extent that the Court in Samoa so directs having been satisfied that the information is required and will be used solely for the purposes of an investigation or prosecution of any person in relation to the sale or laundering of the proceeds of sale of any prohibited narcotic substances, whether that sale or laundering occurred in Samoa or elsewhere;
- (e) by a person to a liquidator of the firm;
- (f) by a partner of the firm to any other person where all of the partners of that firm or all the general partners of the limited partnership consent to such disclosure:

PROVIDED THAT the Authority may in its absolute discretion prohibit any disclosure of any information permitted by this section.

(4) A person who commits an offence under this section is liable upon conviction to imprisonment for a term not exceeding 5 years, or to a fine not exceeding 500 penalty units, or both.

PART 6 MISCELLANEOUS

40. Power of exemption – (1) The Authority may:

- (a) on its own motion or pursuant to an application in writing lodged with the Registrar by an international partnership or limited partnership or a partnership, which if it were registered would be an international partnership or limited partnership, exempt that international partnership or limited partnership or partnership, from all or any of the provisions of this Act and any regulations made there under; and
- (b) impose any terms and conditions as he or she thinks fit as a condition under which that exemption is granted, and an exemption so granted may be revoked or varied by the Authority at any time.

(2) In dealing with an application under this section, the Authority is not required to act judicially and the Authority's decision is in all cases final.

(3) An exemption or condition imposed under subsection (1) takes effect as from the date to be decided by the Authority in its discretion.

41. English the authentic text – (1) A document filed with the Registrar, and all records and accounts required to be kept under this Act shall be in the English language.

(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..

(3) In this section, “certified translation” means a translation into the English language certified in the English language as a correct translation, by a translator before:

- (a) a diplomatic or consular officer of any country; or
- (b) a notary public, justice of the peace or similar person of any country; or
- (c) a solicitor 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 a Court in Samoa.

42. General penalty for offences – A person who commits an offence against this Act and any regulations issued hereunder for which no penalty is provided otherwise than in this section is liable upon conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding 100 penalty units, or both, and, if the offence is a continuing one, to a further fine not exceeding 5 penalty units for every day during which the offence has continued.

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

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

44. Procedure where none laid down – In the event that an 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 regulations for doing the same, application may be made to the Registrar for directions as to the manner in which the same may be done, and an act or step done or taken in accordance with his or her directions is valid performance of such act or step.

45. Immunity – No action lies against the Government or a statutory body or authority of Samoa, the Minister, the Authority, the Registrar or a person acting pursuant to an authority conferred by the Minister, the Authority or the Registrar, as the case may be, in respect of an act or matter done or omitted to be done in good faith in the exercise or purported

exercise of their respective functions conferred by or under this Act or any regulations made thereunder.

46. Accounts to be kept – (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 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) The accounts of partner shall be kept at the office of the partner or at such other place as the partner thinks fit and shall at all times be open to inspection by any partner.

(3) The Registrar may in any particular case direct that the accounting and other records of an international partnership or limited partnership be open to inspection by an auditor acting

for a partner, but only upon an undertaking in writing given to the Registrar that information acquired by the auditor during his or her inspection shall not be disclosed by him or her except to that partner.

(4) A person who, being a partner to an international partnership or limited partnership, fails to take all reasonable steps to secure compliance by the partner with the partnership agreement commits an offence.”.

REVISION NOTES 2008 – 2017

This is the official version of this Act as at 31 December 2017.

This Act has been revised by the Legislative Drafting Division from 2008 – 2017 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes:
 - (i) Minister responsible for Finance
 - (ii) “Samoa International Finance Authority Act 2003” substituted with “Samoa International Finance Authority Act 2005”;
 - (iii) “International Companies Act 1987” substituted with “International Companies Act 1988”..
 - (iv) “Trustee Companies Act 1987” substituted with “Trustee Companies Act 1988”.
 - (v) “Off-shore Banking Act 1987” substituted with “International Banking Act 2005”
- (c) Insertion of the commencement date
- (d) References to the male gender made gender neutral
- (e) sections paragraphed are: 14(1)(proviso), 16(1), 17(1)(proviso), 19(7)(proviso) & 40(1)
- (f) Other minor editing has been done in accordance with the lawful powers of the Attorney General:
 - (i) “Every” and “any” changed to “a/an” or “each” where appropriate
 - (ii) Present tense drafting style where appropriate:
 - “shall be” and “has been” changed to “is/are” or “is/are to be”

- “from time to time” removed
- (iii) Offence provisions: “shall be guilty” changed to “commits”
- (iv) Removal/replacement of obsolete and archaic terms with plain language: “notwithstanding” changed to “despite”
- (v) Numbers in words changed to figures
- (vi) Removal of superfluous terms
 - “the provisions of”
 - “of this Act” (from references such as “section 31 of this Act”)
 - “under this Act” (from “an offence under this Act”)
- (vii) Adopting practice of placing “and” or “or” at the end of each paragraph where appropriate.
- (viii) Altering the form of paragraphs by combining 2 sentences with words, to become 1 sentence (e.g. section 19(7)(b)). Section 19(7)(a) to (d) renumbered as (7) – (7C)
- (ix) Part numbers changed to decimal

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

By the International Companies Amendment Act 2014:

Section 46 New section 46 inserted.

By the International Companies Amendment Act 2015, commenced on 27 April 2015:

Section 46 subsection (1) substituted, new subsections (1A) and (1B) inserted.

By the International Partnership and Limited Partnership Amendment Act, (No.19) commenced on 20 October 2016:

Section 2 inserted new definitions for “beneficial owner” and “ultimate beneficial owner”;

substituted definition of “international Partnership or limited partnership” with new definitions for “international partnership” and “limited partnership”;

amended definition for “partnership” by inserting “or to provide for investment” after “with a view to profit”.

Section 5 substituted section heading with “Permitted business and investment”;

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

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

inserted new subsection (2A);

for subsections (2), (3), (4) and (5), deleted “or limited partnership” wherever appearing in those subsections.

Section 8 substituted new section 8.

Section 17 for subsection (1), inserted “or foreign characters” after “thereof”;

for paragraph (b) of the proviso to subsection (1), inserted “or investment” after “any particular type or class of business”.

Section 19 for subsections (1), (2) and (3), inserted “or investment” after “management of the business” wherever it appears in those subsections;

for subsection (3)(f), for subparagraph (iv), inserted “or investments” after “business” and for subparagraph (v) inserted “and investment” after “the continuation of the business”;

for subsection (4) inserted “or investment” after “in the business”;

for subsection (5) deleted “or unless the business of the firm is assumed and continued under the proviso to section 28(4)” and substituted “or unless the business and the investment of the firm are assumed and continued under the proviso to section 28(4)”;

for subsection (6), for paragraph (b) inserted “or the investment” after “matters connected with the business”.

Section 21 substituted new section 2.

Section 23(1) inserted “or investment” after “before commencement of business”;

for paragraph (d), inserted (“including investment”) after “business”;

for paragraph (e), deleted “the business” and substituted “the business or investment”;

Section 28(1) deleted “unless the business of the firm is assumed and continued under the proviso to subsection (4)” and substituted “unless the business and the investments of the

firm are assumed and continued under the proviso to subsection (4)".

Section 29 inserted "(including making any investment)" after "transact any other business".

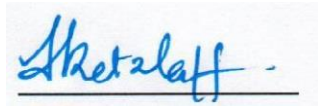
Section 36 substituted new section 36.

Section 39 for the section heading, deleted "Secrecy" and substituted with "Confidentiality";

for subsection (1) inserted ",investments" after "business undertakings";

for the proviso, deleted "phrase "carrying on the business of the firm" does not include" and substitute with "phrase "carrying on the business" does not include".

Section 41 substituted new section 2.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

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