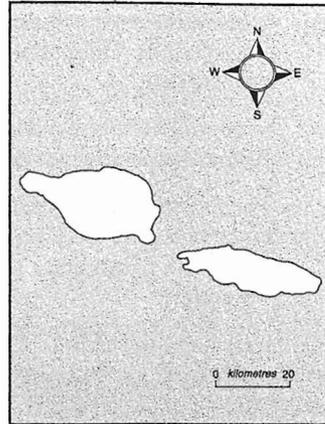


# Samoa

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## 1. Introduction

The country, a former German colony and New Zealand protectorate, became the first island nation in the South Pacific to gain independence in 1962 under the name of 'Western Samoa' to distinguish it from Eastern or American Samoa. A constitutional amendment in July 1997 witnessed the removal of the prefix 'Western' and the country thereafter became known simply as Samoa. Historically, Samoa is perhaps best known as the South Pacific Paradise where renowned Scottish writer Robert Louis Stevenson lived an idyllic life before his untimely death in 1894. Economically, Samoa's experience in the first 30 years since independence is perhaps best summed up in the inaugural Statement of Economic Strategy issued by the government in 1996:

'The Samoan economy has long been characterized by low productivity, low growth and a dominant public sector. Three decades of development plans, sectoral strategies, technical assistance, aid funded capital projects have failed to propel us into a dynamic phase of economic growth which would relieve us of our dependency on foreign loans and remittances from expatriate Samoans'.

A radically new approach was instituted by the government in a series of economic reforms which promoted the private sector as the engine of economic growth. This approach, which resulted in improved economic performance, emulates policies and strategies already pursued by the Samoa Offshore Finance Centre since its inception in 1988, which account for its success to date. A close partnership was formed between a supportive government and proactive, internationally connected trustee companies in the private sector, creating an enabling environment for an efficient and innovative financial services sector which can be depended upon by the international financial community. Within this context, the key administrative and legislative features of the Offshore Finance Centre are:

- the achievement of enduring success by opting for controlled long-term growth by building a sound Centre which is reputable and properly regulated;
- continual review and identification of changes to be made by the Centre and its operators to strengthen its competitiveness in the global market.

The five pieces of legislation forming the legal foundation of the Offshore Finance Centre have been constantly reviewed and fine-tuned in accordance with trends and developments in the international finance industry. They are:

- (i) the International Companies Act 1987;
- (ii) the Offshore Banking Act 1987;
- (iii) the International Trusts Act 1987;
- (iv) the Trustee Companies Act 1987; and
- (v) the International Insurance Act 1988.

Since 1993, the above laws have been reviewed and revised as follows.

The International Companies Act was amended in 1996 to introduce the Limited Life International Company or US-styled LLC based on the Wyoming Legislation of 1977 and is specifically designed for acceptability and compatibility with the United States and Canada.

The International Companies Amendment Act 1998 introduced 'companies limited by guarantee' and 'companies limited by both guarantee and shares', otherwise known as hybrid companies. Other noteworthy changes include the streamlining of redomiciliation procedures allowing the transfer of a company to Samoa, provided the laws of the jurisdiction of origin allow it, but without the need for the foreign jurisdiction's express permission. This, coupled with the discounted annual redomiciliation fee of US\$100, is designed to attract a steady number of companies incorporated elsewhere with a genuine need to economise. Powers of the Registrar to strike a company off the Register have been expanded to allow deregistration of a company which, for instance, is incorporated for an illegal purpose.

The Offshore Banking Amendment Act 1998 generally strengthened the regulatory capacity and control of the offshore banking sector. A new post of Inspector of Offshore Banks was established to supervise and oversee the offshore banking sector and to adopt internationally accepted supervision guidelines.

New gateway provisions were enacted as of 17 July 1998 allowing regulator-to-regulator disclosure for effective supervisory purposes. The exchange of information under strict terms of confidentiality is complemented by existing licensing procedures which comply with the 'know your customer' principle. Stricter post-licensing controls have been introduced in relation to operations of offshore banks by requiring

government approval of share transfers, appointment of directors and opening of branches or subsidiary offices overseas.

With the appointment of an Inspector of Offshore Banks, there is now a clear demarcation between the disciplinary powers of the Minister and the supervisory functions of the Inspector. Powers of the Minister under the 1998 changes have been enlarged to:

- (i) enable conditions to be imposed on a bank after issue of a licence;
- (ii) require the substitution of any director of the bank;
- (iii) appoint an adviser, receiver or manager to the bank;
- (iv) allow the requirement for a licensee to effect an insurance policy against the dishonesty of employees of the licensee, loss of documents and such other risks as stipulated by the Minister.

Based on the premise that suspension of a banking licence effectively destroys the bank and any investor confidence, the changes have removed such disciplinary measures traditionally within the ambit of ministerial powers. The 1998 amendments also clarify and expand the powers of the Minister to take appropriate action against a licensee where the bank is carrying on business in a manner detrimental to the public interest or the interests of its depositors or other creditors or where the bank is unable to meet its debts as they fall due or has failed to comply with the Act or ministerial directive.

Here are some of the 1998 changes affecting entities already licensed as offshore banks:

- (i) validity of an A class banking licence was reduced from five to two years thus allowing tighter controls and supervision of A class banks;
- (ii) restricted B2 banking licensees are allowed to accept deposits only from persons or entities whose names are listed in the undertaking accompanying the licence application.
- (iii) restrictions are imposed on both A and B1 banking licensees which prohibit granting any advances against the security of their own shares and any unsecured loans exceeding 1% of their paid-up capital to related parties (including directors, shareholders and their families).

The International Insurance Act 1988, which governs the licensing of insurance companies, was most recently changed in 1998 to adopt a similar supervisory approach to that for offshore banks. Gateway provisions allowing regulator-to-regulator disclosure for effective licensing purposes were introduced and stricter controls imposed on the operations of insurance companies. For instance, the Registrar's written approval is required for the issue or transfer of any shares except where shares or other securities are issued to existing shareholders on a *pro rata* basis. In addition to the requirement for all licensed insurance companies to lodge annual returns and audited accounts, companies conducting long-term insurance

business are now also required to lodge actuarial valuation of their assets and liabilities every two years.

The Trustee Companies Act 1987 was changed in 1998 to prohibit the transfer or issue of new shares in a licensed trustee company without ministerial approval.

The International and Limited Partnership Act 1998, a brand new Act, is a novel addition to the legal basis of the Centre, which authorises the formation of tax exempt international partnerships and limited partnerships. Both kinds of partnership must have the following features:

- (i) all partners must be non-resident;
- (ii) the partnership must not carry on business or engage in trade in Samoa;
- (iii) one of the partners or limited partners of a limited partnership must be either an international, foreign or trustee company registered in Samoa.

There is no requirement to file with the Registrar partnership agreements or disclose any information regarding individual partners.

Annual registration and renewal fees are US\$150, with the option of registration at discounted fees for a long-term period of five, 10 or 20 years at US\$500, US\$800 or US\$1,200 respectively.

## **2. Background**

### **2.1 Geography**

Samoa is a group of Pacific islands located in the heart of Polynesia. It comprises two main islands (Upolu and Savaii) covering an area of 1,100 square miles (2,850 square kilometres) and is situated approximately half way between Hawaii to the north and New Zealand to the south.

Savaii is the largest island whereas Upolu is more developed, densely populated and is the centre for commerce and business. Apia is its commercial and administrative capital and is situated on the northern coast of Upolu.

### **2.2 Climate**

Due to its geographical location within the warmth of the South Pacific, Samoa enjoys a pleasant tropical climate with temperatures ranging from 72° to 86°F (22°–30°C) with a maximum in excess of 2,500 hours of sunshine a year.

The climate does not vary significantly during the year, although there is a dry season between May and November and a wet season normally between November and April. In each year brief downpours alternate with

long periods of sunshine, the latter being one of the main attractions for tourists. This regular combination of sun and rain produces lush green flora covering much of the islands.

### 2.3 Constitution and government

Due to the events of history and colonialism, Samoa adopted on independence in 1962 the British common law system and a Constitution providing for a Westminster-type government. The Constitution of Samoa, written by Professors Colin Aikman and Jim Davidson, acknowledged in its preamble the universal sovereignty of God and declared as its basis 'Christian principles and Samoan custom and tradition' wherein fundamental rights are guaranteed, including the right of freedom of speech, assembly, association, movement and residence.

As a fully independent state, Samoa has a unicameral parliament, the law-making body under its Constitution which consists of the Head of State and the Legislative Assembly. The life of parliament was extended from three to five years in the early 1990s. The Speaker, who presides over the Assembly, and the Prime Minister are both elected by the members. The judiciary or Samoa court system comprises of the magistrates court, land and titles court and the Supreme Court. The latter has jurisdiction to administer the laws of Samoa with the Court of Appeal, hearing appeals on any judgment of the Supreme Court.

### 2.4 Economy

The Samoan economy is traditionally based on agriculture, with the small village unit as the production nucleus. In 1998 the primary sector, comprising agriculture, forestry and fishing, and the subsistence sector accounted for around one-third of GDP. However, modernisation of the Samoan economy has diversified its economic base and as a result the manufacturing and service sectors are now significant contributors to GDP. Infrastructure redevelopment following the 1990 and 1991 cyclones boosted the construction industry and produced marked improvements in telecommunications, transport, water supply and the seawall to name a few. Following a significant drop in agricultural output in 1994 the economy has recovered strongly producing real GDP growth of 9% in 1995, 6% in 1996 and a lower 3% in 1997 and 1998. Improvement in Samoa's trade position is attributed to buoyant tourism earnings, the steep climb of fish exports and recovery of the construction and manufacturing industries.

The country maintains a comfortable level of external reserves, which, in mid-1999, were sufficient to cover approximately 6.4 months' imports. The recovery of agricultural production and the diversification of exports have improved the balance of payments outlook considerably. The exchange rate of the local currency, the tala (SAT), is measured against a basket of currencies of its six major trading partners. The basket is

reviewed periodically to ensure that exchange rates are in line with changing economic and market conditions. The Central Bank's exchange rate policy is aimed primarily at supporting the balance of payments, while ensuring Samoa maintains its competitiveness *vis-à-vis* its major trading partners.

## 2.5 Population

The Polynesians settled the islands of Samoa in about 1000 BC and their customs and extended family ties are still evident today, having evolved into a distinctive Polynesian culture known as the Faasamoa.

Within the Faasamoa context traditional authority rests with the matai of the extended family who is appointed by consensus. The appointment process allows everyone in the extended family a say. Whoever captures the most support gets the appointment. Thus the right of accession does not pass automatically from father to son as happens in most of the societies of the Pacific. This right to participate in the process of appointing a leader within the family made it easier to introduce universal suffrage in 1991, allowing everyone of 21 years and over to vote. Before the 1991 elections, the matai suffrage only allowed registered chiefs or matais to vote.

Today a largely homogenous population of about 165,000 occupies a total of 362 villages. There is a large expatriate community of European, New Zealand, Australian, Chinese and other nationalities who happily co-exist with no racial strife or tensions.

## 2.6 Language

The vernacular tongue is Samoan but English is widely used in business. The laws are printed in both English and Samoan but the English version prevails in the case of inconsistencies.

## 2.7 Currency

The currency of Samoa is the tala (dollar) and sene (cent). One tala comprises 100 sene with an approximate equivalence of 3.0 tala (SAT3) to one US dollar. Currency is issued in bills of 100, 50, 20, 10, 5 and 2 tala.

## 2.8 Travel and communications

Government efforts in recent years have been most visible in improving the physical infrastructure of Samoa. The modern international airport which can accommodate 747-type aircraft was recently upgraded with the extension of the runway and renovation of the terminal. Apart from the country's national airline, Polynesian Airlines, other carriers servicing the country include Air New Zealand, Air Pacific and Samoa Air with direct

flights or connections to the United States, Australia, New Zealand, Hawaii and other Pacific islands. Plans are also under way to extend the harbour at Apia, which presently accommodates large passenger and cargo ships. There are regular shipping services to Europe, the West Coast of the United States, Japan, Australia, New Zealand and major Pacific islands.

There are two telephone service providers in Samoa. The government corporation, now known as Samoa Communications Ltd, provides services to all areas. The international telephone system is first class and accessible by direct dial under the country code (+685). Internet service is facilitated by three service providers offering competitive rates. Telecom Samoa Cellular Limited, mainly owned by Telecom New Zealand, provides analogue mobile phone services. All international telecommunications are available 24 hours a day. International courier services are also readily available.

## 2.9 Setting up an office

### (a) Premises

Progressive land laws enable the long-term leasing of land for agricultural and industrial use. For industrial sites, a 100-acre industrial estate has been developed which is well supplied with water and electric supply amenities. This site is available for long-term leases at attractive rentals. Rental premises are also available either from the private sector or government. At present there are four major high-rise office buildings strategically located in the centre of the bustling town of Apia, with another due to be completed by mid-2000.

### (b) Employment

#### *Foreign nationals*

Although government policy encourages the employment of locals whenever possible, due to its relatively recent establishment in the country the Offshore Finance Centre requires the use of expatriate expertise.

#### *Local staff*

A healthy and highly educated pool of potential employees is available in Samoa all of whom are well versed in the English language. The minimum wage rate of SAT1.40 or US\$0.60 per hour is very competitive.

### (c) Residential accommodation, quality of life and cost of living

Most local staff reside in the suburbs of Apia, although a small minority commute from their villages into town. Expatriates, on the

other hand, have a choice of either renting on the outskirts of Apia at a reasonable cost or opting for the more expensive and luxurious houses on the cool hillside of Mt Vaea, the final resting place of the famous writer Robert Louis Stevenson. Moreover, ultra-modern townhouses are available on prime land, close to the town school and national hospital.

The cost of living in Samoa is relatively high compared with that of New Zealand, the United States and Australia but is lower than that of Vanuatu and New Caledonia, two of the neighbouring islands. This is largely due to the high consumption of taxed, processed foods imported from overseas. However, many local families grow most of their food, e.g. subsistence crops like taro, bananas and coconuts. Fresh fish is also popular and is available at the local fish market. Samoa offers an attractive, warm and safe place to live. Unlike the time-orientated western countries, the Samoans adopt a more leisurely outlook on life.

## 2.10 Immigration

A work permit is required when employing an expatriate. Usually such permits are granted only if the skills needed are unavailable locally. However, there is a general recognition that foreign investors will require experienced expatriate managerial and technical staff. A work permit for six months, which is renewable for a further six months upon request of the local firm, can be applied for on behalf of a non-citizen of Samoa. A foreign national/expatriate may be granted permanent residence if he/she has resided continuously in Samoa for not less than five years. Individuals wishing to become permanent residents of Samoa must apply to the Secretary to the Prime Minister's Department.

## 2.11 Confidentiality

Confidentiality is the cornerstone of any offshore finance centre. The Samoa offshore jurisdiction is no exception, and has strict secrecy provisions sanctioned by heavy penalties written into each of the Acts forming its legal basis.

The desire for secrecy, however, must be balanced against the essential need to maintain a reputable and credible jurisdiction, hence gateway provisions allowing regulator-to-regulator disclosure for effective supervision of offshore banks and insurance companies. In addition, the Prevention of Money Laundering Act 2000 was enacted on 14 June 2000 to detect and deter money launderers from using the jurisdiction for illicit purposes. The provisions of the Act expressly override secrecy provisions in any other enactment.

### 3. Business entities

Several types of business entities are available under the International Companies Act 1987 – international companies (known elsewhere as international business corporations); foreign companies, limited life international companies (US-styled LLCs); companies limited by guarantee and companies limited by both guarantee and shares (hybrid companies). These entities can also be classified in accordance with liabilities, hence other than the 'limited life international company', there are three categories of international company:

- (i) companies limited by shares;
- (ii) companies limited by guarantee; and
- (iii) companies limited by both guarantee and shares.

#### 3.1. Companies limited by shares

##### (a) Authorisation required

No authorisation is required provided the instructions for registration, the Memorandum and Articles of Association, notice of registered office, accompanied by the prescribed fee are lodged with the Registrar through a licensed trustee company. Trustee companies have pre-client acceptance criteria with which prospective clients must comply.

##### (b) Name

Name approvals must first be obtained from the Registry and a proposed company name can be reserved for up to three months. A company can be registered with virtually any name in any language which includes a word or words which connote corporate existence. An international company can have as part of and at the end of its name either the words Corporation or Corp, Incorporated or Inc, Limited or Ltd, Berhad or Bhd, Société Anonyme or Sociedad Anonima or SA, Namlooze Venootschap or NV, Besloten Venootschap or BV or Aktiengesellschaft or AG.

##### (c) Availability of companies

Shelf companies are available, although they are unnecessary from a practical viewpoint as a company can be incorporated within 24 hours on receipt of the relevant documentation.

A company incorporated as a company or corporation outside Samoa may, if not prohibited under the laws of that jurisdiction, apply to the Registrar for registration as being continued in Samoa as if it had been incorporated under the International Companies Act.

Companies can be incorporated with a foreign language name (e.g. in the Chinese language), and dual language Certificates of Incorporation printed entirely in English and in Chinese can now be issued. A company can also lodge with the Registry the Memorandum and Articles of Association of a company in a foreign language, provided a certified translation in English is also filed.

(d) **Minimum costs of a company**

The government levies an annual fee of US\$300. A company whose domicile is transferred from another jurisdiction to Samoa is subject to a government annual and renewal fee of US\$100. Trustee companies charge fees depending on services rendered. For long-term companies the government levies a fee of US\$1,000, US\$1,500 or US\$2,000 for registration for five, 10 or 20 years respectively.

(e) **Share capital**

There is no minimum share capital prescribed.

(f) **Shares**

An international company can issue either par value shares, or no par value shares or both types. Moreover, shares can be issued to bearer, at a discount or premium, by way of gift and in fractions and they can be cancelled, forfeited, redeemed, reissued, converted to another class or redenominated in a different currency without being cancelled and fresh shares issued.

(g) **Increase in share capital**

An international company may by special resolution increase its share capital in various ways including the creation of new shares of such par value as it thinks expedient, the increase of the number of shares having no par value, and the addition to its capital shares having no par value where the international company has existing shares with a par value, etc. As the increase in share capital entails an alteration to the Memorandum of Association, the company must, within 21 days of the resolution being passed, submit a copy of the alteration and resolution for registration.

(h) **Reduction in share capital**

Share capital can be reduced in two ways:

- Subject to confirmation by the Registrar and if authorised by its Articles, an international company may by special resolution

reduce its capital in any way including extinguishing or reducing liability of any of the shares in respect of unpaid share capital and cancelling any paid-up capital which is lost or unrepresented by available assets, etc.

- Without the Registrar's consent and if authorised by its Articles, and if the directors honestly believe that the company will be able to pay its debts as they become due, an international company may make any distribution to members or reduce or extinguish the liability of its members in any way and, in particular, extinguish or reduce the liability of any of the shares in respect of unpaid share capital.

**(i) Shareholders**

The minimum number of shareholders is one. Shareholders may be individuals or corporate entities provided that the individual or company is not a citizen, resident or domiciled in Samoa, except for a trustee company. The identity of shareholders is not a matter of public record and nominees may be used.

**(j) Meetings**

An international company can resolve not to hold any annual general meetings unless a member requires one to be held. Meetings can be held anywhere and by any means of audio or visual communication and voting can be effected by circulating resolutions to members. Moreover, it is valid in the case of single shareholder companies for the presence of one person to constitute a meeting.

**(k) Directors, secretaries and officers**

A director is defined as 'any person occupying the position of director of an international company and any person held out by the company to be a director'. An international company must have at least one director who may be a resident director and any casual vacancy in directors may, if the Articles do not provide otherwise, be filled by a person appointed by the continuing directors or appointed by the Registrar on request from a member. Any director required to hold a specified share qualification as per the Articles of Association must obtain such qualification within two months after his appointment.

The prescribed minimum number of secretaries is one and if he/she is not resident in Samoa, the company must appoint a resident agent.

An officer is defined as 'including any director, secretary or employee of the company, a receiver, and any liquidator appointed in a voluntary winding up'. Officers of the company may be

individuals or corporations, and there is no residency requirement except for the agent.

An international company can elect to notify the Registrar within one month after incorporation of its directors, resident directors and secretaries. There is a recently established code of liabilities for officers of an international company which restricts their liabilities. If required, the trustee company must provide resident directors/agents. The initial subscribers to the Memorandum appoint the officers and any subsequent officers are appointed pursuant to the provisions in the Articles of Association.

(l) **Registered Office**

The registered office of an international company must be the principal office of a registered trustee company in Samoa. Notice of a company's registered office is a prerequisite for the incorporation or registration of a company.

(m) **Objects clause**

An international company can be incorporated under the Samoa International Companies Act 1987 for any lawful purpose and is given the powers of a natural person, which abandons the *ultra vires* rule, and which are in addition to the powers set forth in Schedule 1 to the Act. Moreover, it is possible to ratify a contract made before the incorporation. Third parties are also able to make certain assumptions in their dealings with the company and its officers which the latter are estopped from rebutting provided that the third party did not have actual knowledge or reason to suspect otherwise. For instance, the assumption that a person appearing in the register of directors, or held out to be an agent, has been duly appointed as such.

An international company is not permitted to conduct offshore banking or insurance business unless it is licensed to do so. It is also prohibited from carrying on business with or acquiring any assets from any person resident in Samoa or any domestic company other than a trustee company. Furthermore it is forbidden to own an interest in land or real estate situated within the jurisdiction other than a lease of property for office use. In addition an international company cannot make any disposition to or grant or settle any property on any person resident in Samoa or any domestic company which is not a trustee company. With regard to property located outside Samoa, a company cannot make any disposition or grant or settle such property in Samoan currency.

**(n) Audit**

An international company need not file an annual return but is obliged to keep proper books and must submit such accounts as the directors consider necessary or appropriate to reflect its financial position. Only holders of offshore banking and insurance licences must submit audited accounts within six months of the end of the financial year, financial statements (either on a quarterly or six monthly basis) and annual returns by the 31 December in each calendar year.

**(o) Information on public record**

An index of all company names, their registered office and the Memorandum and Articles of Association of any company registered after 1 February 1993 can be divulged without the express written consent of the client.

Any person may seek from the Registrar a certificate of good standing for a registered company which confirms among other things that the company name is on the Register, that it has complied with its obligations under the Act and that the company is not in the process of being wound up.

**3.2 Foreign Companies**

A company incorporated outside Samoa which wishes to establish a permanent establishment or carry on business within Samoa and is not registered as an overseas domestic company, must register as a foreign company under Part X of the International Companies Act.

**(a) Authorisation and procedure**

Application is made to the Registrar of International and Foreign Companies through a trustee company, accompanied by the registration fee and:

- (i) a certified copy of its Certificate of Incorporation;
- (ii) a certified copy of its constitution or Memorandum and Articles of Association;
- (iii) a list of its directors and secretaries and, if any directors are residents of Samoa, a memorandum stating what their powers are;
- (iv) a memorandum stating details of a trustee company which is authorised to accept service of process and notices on behalf of the company;

(v) the address of the registered office in Samoa which must be the principal office of a trustee company;

(vi) a declaration setting out particulars of the company's capital.

Upon registration, the Registrar issues a Certificate of Registration which is valid for 12 months. It is renewed on payment of the annual renewal fee for further periods of 12 months. A foreign company is required to lodge an annual return within three months after the date of its annual general meeting for the year to which the annual return relates. It must also notify the Registrar within one month of changes in its name, constitution, capital (or number of registered members if it does not have a capital), directors, registered office or in the powers of any local resident director.

A foreign company is not regarded as carrying on business in Samoa by reason only of it conducting within Samoa an unsolicited isolated transaction which is completed within 31 days, not being one of a number of similar transactions repeated more than twice.

(b) **Information on public record**

An index of names of registered foreign companies and their registered office can be seen without obtaining the express consent of the company.

### 3.3 Limited life international companies

The 'limited life international company' (based on the Wyoming LLC legislation) was introduced by amendments to the International Companies Act in 1996. An LLC is a specific hybrid of a traditional company and partnership that combines the pass-through tax aspects of a partnership with the limited liability advantages of a corporation. Other features of the limited life international company are that:

- (i) the name must have the words 'limited life international company' or its abbreviations 'LLC' or 'L.L.C', 'Ltd. Life Co' or 'Limited Life International Co.';
- (ii) a minimum of two members, excluding a trustee company, must subscribe to the Memorandum unless it is subscribed for shares;
- (iii) the Memorandum must, *inter alia*, state the name of the company, the address of the registered office, the purpose of incorporation and the name and address of the resident agent;
- (iv) the company must have additional powers as set out in Schedule 3 of the International Companies Act 1987;
- (v) the duration of the company shall be 50 years from the date on which the certificate is issued, unless otherwise specified in the Memorandum;

- (vi) The Articles of Organisation must, among other things, state whether management is reserved to its members or if managers and membership rights are specified, while the issue of bearer shares is expressly prohibited.

### 3.4 Companies limited by guarantee

A company limited by guarantee is a company in which the liability of members is limited to the extent to which they respectively undertake to contribute to the assets of the company in the event of its being wound up. See 3.5 below for authorisation and procedure.

### 3.5 Companies limited both by shares and guarantee (hybrid companies)

A hybrid company is simply a company limited by guarantee and having a share capital, i.e. it has members whose liability is limited by guarantee, and members whose liability is limited by shares. A shareholder is not required to be a guarantee member or *vice versa*. A guarantee member's liability is limited by the memorandum to the extent to which the member has undertaken to contribute in the event of the company being wound up. The shareholders' liability is limited only to the extent of any amount paid on the shares held by them.

#### (a) Authorisation required for either a company limited by guarantee or a hybrid company

A trustee company may apply to incorporate or register a company limited by guarantee or a company limited by both guarantee or shares.

#### (b) Name

Name approvals must first be obtained from the Registry and a proposed company name can be reserved for up to three months.

#### (c) Memorandum and Articles of Association

For a company limited by guarantee, these must state, among other things, the name of the company, and include an undertaking by the members regarding the amount to be contributed to the assets of the company in the event of a winding-up.

#### (d) Post-incorporation requirements

A Certificate of Incorporation remains valid until it is struck off the Register and is subject to payment of a renewal fee payable on 30 November in each year following incorporation.

(e) **Change of status**

Unless otherwise provided in its Memorandum, an international company (except a limited life international company) may change its status to a company limited by guarantee or to a hybrid company or *vice versa* provided the following requirements are met:

- (i) the proposed change has been authorised by a member's special resolution and is given effect to within six months from the date of the special resolution; and
- (ii) a statutory declaration by the directors is lodged with the Registrar stating:
  - the change of status will in their honest belief not result in the company being incapable of meeting its obligations to its creditors as they fall due,
  - the company has fully complied with the Act,
  - the Memorandum and Articles will be amended within at least three days to reflect the new status;
- (iii) payment of the prescribed fee.

The change of status becomes effective on the day the company files a copy of the amended Memorandum and Articles, and the Certificate of Change of Status issued by the Registrar is conclusive evidence that the company has complied with all requirements of the Act.

**3.6 International partnerships and limited partnerships**

The International Partnership and Limited Partnership Act 1998 provides for exempt international partnerships and limited partnerships. An international or limited partnership is defined as being registered under the Act and in respect of which:

- (i) all partners are at all times non-residents of Samoa;
- (ii) the partnership does not carry on business or engage in a trade in Samoa; and
- (iii) one of the partners or the limited partner of the limited partnership is either an international company, registered foreign company or a licensed trustee company.

An international or limited partnership may be formed for any lawful purpose to be undertaken in or from within Samoa subject to provisions of the Act and the partnership agreement.

The Act allows for the registration of long-term international and long-term limited partnerships upon payment of prescribed long-term registration fees and renewal fees to the Registrar. An international

partnership or limited partnership may convert to a long-term international or long-term limited partnership upon payment of prescribed fees.

**(a) Authorisation and procedure**

Application for registration of an international or limited partnership is made to the Registrar through a trustee company in the prescribed form, accompanied by the prescribed fee and a certificate from the trustee company confirming that:

- (i) one of the partners of the limited partnership is either:
  - an international company, or
  - a foreign company, or
  - a trustee company; and
- (ii) each partner is a non-resident

For a limited partnership the trustee company must certify that upon registration it will consist of at least one general and one limited partner. On registration of a limited partnership and before it commences business, a certificate completed and signed by a general partner may be filed with the Registrar containing the following particulars:

- (i) the firm name;
- (ii) names and addresses of all the partners, distinguishing the general from the limited partners;
- (iii) details of the capital contribution of each limited partner;
- (iv) the general nature of the business to be transacted;
- (v) the principal place of business;
- (vi) the term 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.

The filing of a certified true copy of the partnership agreement with the Registrar is optional.

**(b) Firm name**

Every international or limited partnership must have a firm name which may include the name of any partner or any derivation thereof. The firm name must not be misleading or similar to a name of any other entity licensed in Samoa or elsewhere. A limited partnership is, however, required to include at the end of the firm name the words 'Limited Partnership' or the letters 'LP'.

(c) **Registered office**

Every partnership is required to have a registered office in Samoa, which must be the office of a trustee company.

(d) **Constitution**

An international partnership is constituted by partners who are jointly and severally liable in their personal capacity for the partnership debts.

A limited partnership must consist of one or more general partners, who will be personally liable for all the debts and obligations of the partnership, and one or more limited partners, whose liability for the debts and obligations of the partnership is limited to the amount contributed as capital to the partnership. A general partner may also take an interest in the same firm as a limited partner.

(e) **Applicable laws**

In addition to the International Partnership and Limited Partnership Act 1998, the laws of Samoa including the Partnership Act 1975 and English common law apply to international partnerships except where there are inconsistencies.

The Act modifies the laws of partnership in the case of limited partnerships. It provides that a limited partner should not take part in the management of the business of a limited partnership. If a limited partner elects to take part in the management of the business in its dealings with people outside the partnership, then that limited partner will be liable, in the event of its being insolvent, for all its debts and obligations incurred during the period of his participation in the management of the business.

(f) **Renewal**

Every partnership, with the exception of long-term partnerships registered under section 34 of the Act, shall pay to the Registrar on 30 June of each year, following the year of first registration, such annual renewal fee as may be prescribed.

(g) **Privileges and exemptions**

Registered international and limited partnerships are exempt from all local taxation, duties or requirements to file any returns, accounts or reports. All business transactions by such partnerships are exempt from all taxation, stamp duties or any currency or exchange control restrictions and no foreign exchange levy shall be imposed.

(h) **Secrecy**

It is an offence under the Act to divulge or communicate any information relating to the establishment, constitution, business undertakings or affairs of an international partnership or limited partnership.

(i) **Dissolution**

In a limited partnership, the affairs of the firm can only be wound up by the general partners. A notice of dissolution in the prescribed form signed by a general partner must be filed with the Registrar before the firm can be dissolved. A partner or creditor may apply to court for the dissolution of any limited partnership and the court may make such orders and give such directions for the winding-up of its affairs as may be just and equitable.

Certain circumstances including the death, insanity, retirement, bankruptcy or commencement of liquidation proceedings of the sole or remaining general partner will cause the immediate dissolution of the limited partnership in accordance with provisions of the partnership agreement or court orders.

4. **Recognition of trusts**

An international trust is defined in the International Trusts Act 1987 as a trust in which at least one of the trustees, donors or holders of a power of advancement is either:

- (i) a trustee company;
- (ii) an international company; or
- (iii) a foreign company registered under Part X of the International Companies Act 1987 and the beneficiaries are at all times non-resident.

A trust is deemed irrevocable unless it contains an express power of revocation. A trust will not be made void or voidable in the event of the settlor's bankruptcy or liquidation unless the trust was created with intent to defraud creditors. Charitable trusts may be registered, and the categories of trusts deemed to be charitable originate from the landmark case of *Income Tax Special Purposes Commissioners v Pemsel*, i.e. for the relief of poverty, the advancement of education or religion (notwithstanding that the object or purpose of the trust may be for the benefit of a section of the public or benefit privately one or more persons) and other purposes beneficial to the community.

As in all other offshore legislation, there are severe penalties for breach of the secrecy provisions.

In setting up an international trust, it is necessary to lodge an application through a trustee company with the Registrar of International Trusts together with the prescribed government levy of US\$150. In addition to this, details of the name of the trust and of the offshore or the representative trustee, and a certificate from the trustee company to the effect that the trust upon registration will be an international trust as per the provisions of the law, are required.

Furthermore, an international trust is not required to deposit any money in any public account, file any accounts or records or register with or be licensed by any other authority. For the purposes of registration, a certified copy of the trust deed or any amendment thereof may be produced to be endorsed by the Registrar.

Registration for a period of 12 months is normally completed on the same day as the application is made.

#### 4.1 Taxation of trusts

At the outset it must be clarified that for taxation purposes local trusts are differentiated from international trusts. Under the provisions of the Income Tax Act 1975, tax of 15% is imposed on both tax resident and non-resident trusts, whereas registered international trusts are exempt from any form of taxation.

New trusts legislation proposed to replace the International Trusts Act 1987 will introduce the following tax exempt trust products:

- (i) asset protection trusts; including fraudulent dispositions provisions to introduce a limitation period of three years in which an asset protection trust can be attacked by creditors as a fraudulent disposition – the burden of establishing such a fraudulent disposition is upon the creditor;
- (ii) purpose trusts and commercial purpose trusts;
- (iii) charitable purpose trusts;
- (iv) protective or spendthrift trusts;
- (v) unit trusts, etc.

### 5. Taxation

#### 5.1 Introduction

The local tax system in Samoa, which is separate from total tax exemption under the offshore legislation, imposes income and company taxes on worldwide earnings of Samoan residents and on Samoa source income derived by non-residents.

## 5.2 Direct taxes

### (a) Individuals

Salary and wage earners pay income tax through the PAYE system known as salary and wage tax, where the fortnightly deduction is a final liability.

Annual rates of tax (Samoan tala)

\$0–\$10,000	Nil
\$10,0001–15,000	10%
\$15,001–20,000	20%
over \$20,001	29%

Individuals in business pay tax on an annual assessment basis at the same rates as salary and wage earners.

Tax is collected in advance through either the source deduction system or provisional tax system. The source deduction system requires tax to be withheld from certain classes of receipts of income and credited against the final annual assessment. The provisional tax system requires payment of three equal instalments of the estimated annual tax liability which is also credited against the final annual assessment.

### (b) Corporations and trusts

Companies and trusts pay tax on an annual assessment basis at the rate of 29% of every dollar of taxable income. Tax is also collected in advance through either the source deduction system or the provisional tax system (see (a) above).

### (c) Non-residents

The following classes of income derived by non-residents are subject to withholding tax at the rate of 15% and are a final liability:

- (i) interest;
- (ii) royalties;
- (iii) payments for the supply of scientific, technical, industrial or commercial knowledge;
- (iv) income received from personal services provided to the Government of Samoa where funds are provided under the terms of an arrangement for assistance between the Government of Samoa and the government of another country or international organisation.

Capital gains tax is payable on capital profits made on asset sales within three years of the date of purchase. The rate of tax is 29%.

The gross amount derived by a non-resident from the operation by sea of any overseas freight and passage money is subject to tax at the rate of 5%.

The gross amount derived by a non-resident from the distribution or exhibition of films is subject to tax at the rate of 15%.

Gross premiums derived by a non-resident insurer from the business of insurance in Samoa are subject to tax at the following rates:

- (i) gross premiums for life insurance – 7.5%;
- (ii) gross premiums from general insurance – 15%;
- (iii) gross premiums from reinsurance – 7.5%.

The rate of tax for life insurance and reinsurance premiums is 7.5%.

(d) **Value added goods and services tax**

A 10% comprehensive goods and services tax was introduced as from 1 January 1994 on all consumption of goods and services in Samoa. This tax does not apply to primary producers, hobby activities or any engagement, occupation or employment under contract of services.

(e) **Tax privileged status**

In its efforts to encourage economic growth, the government offers a blend of investment schemes for both domestic and foreign investors under the Enterprise Incentives and Export Promotion Act 1992/1993 and Enterprises Incentive Export Promotion Act 1998.

The Acts categorise enterprises as either domestic enterprises or export enterprises. An export enterprise is an industrial activity which exports at least 95% of its annual production. A domestic enterprise is defined as an industrial activity which is not an export enterprise.

Enterprises eligible for these benefits include:

- (i) companies processing primary agricultural or pastoral products;
- (ii) factories;
- (iii) hotels and visitor support facilities;
- (iv) fisheries;
- (v) afforestation;
- (vi) research and development;
- (vii) international shipping;

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- (v) afforestation;
- (vi) research and development;
- (vii) international shipping;

- (viii) flowers, plant stock and foliage for export;
- (ix) rental cars and buses principally for tourists;
- (x) hydroponic cultivation and propagation of plants and vegetables;
- (xi) trade in banking, telecommunications and radio, television, insurance, international airlines and private hospitals.

(f) **Double tax treaties**

To date, Samoa has not entered into any treaties with any other countries.

(g) **Preferential trade agreements**

Manufacturers in Samoa enjoy the benefit of generous trade concessions under the three important trade agreements and arrangements under which Samoa is a signatory or an eligible beneficiary. Basically these agreements are non-reciprocal and provide preferential access to the major markets of the world. Samoa is also a signatory to the regional Sugar Agreement with the South Pacific Forum Island countries.

The three main preferential Trade agreements are:

- (i) Spartecca – Australia and New Zealand;
- (ii) LOME IV – European Union;
- (iii) GSP – United States, Canada, Japan and other ‘preference giving’ countries.

*Spartecca – Australia, New Zealand*

This is the acronym for the South Pacific Regional Trade and Economic Co-operation Agreement between Australia and New Zealand, on the one hand, and the South Pacific Forum Island Countries (FICs – which include Samoa), on the other. The agreement, which came into force in January 1981, is on a preferential non-reciprocal basis. Preferences are in the form of duty free and unrestricted access or concessionary access for specified products ‘originating’ from FICs.

Recently the requirements have been relaxed in respect of exports consisting of inputs of products covered by the Australia and New Zealand Closer Economic Relations Trade Agreement (Anzcerta). Export of products in these circumstances requires Samoan content of at least 25%.

**Product coverage** Basically all exports from Samoa enter Australia and New Zealand duty free and without quantitative restrictions.

**Rules of origin** Fundamental to the operation of the concessions are the rules of origin which classify items as originating in Samoa if these are:

- (i) unmanufactured, raw products of Samoa;
- (ii) manufactured goods in relation to which the last manufacturing process has been undertaken in Samoa; and
- (iii) manufactured goods where at least 50% of the ex-factory or works cost of the goods is made up of material and/or labour input of Samoa and any other of the FICs, Australia and/or New Zealand.

**Certification** Requires a declaration of local content on a commercial invoice.

#### *ACP – EU Convention of LOME IV*

The above agreement is between the 10 member States of Africa, the Caribbean and the Pacific (which include Samoa) known collectively as the ACP, and the EU. LOME IV permits products 'originating' in the ACP States to be exported to the EU free of customs and other similar charges and also without any quantitative restrictions.

**Product coverage** The general rule regarding unrestricted access is subject to a number of restrictions:

- there are special arrangements for imports of agricultural products which are indirectly or directly covered by the community's common agricultural policy;
- safeguard mechanisms exist in the Agreement to protect domestic manufacturers from serious injury from preferential imports.

**Rules of origin** Only products originating in ACP States qualify for the preferential arrangements. Products considered as originating in an ACP state are defined as products 'wholly obtained' in one or more ACP states. 'Sufficiently worked or processed' refers to a product which undergoes a change in tariff classification as a result of such processing, e.g. yarn converted to fabric for the production of garments. Certain specified operations of a simple nature like drying, sifting, clarifying, changes of packaging, etc. are not considered to be 'sufficient working or processing' to qualify a product as originating from an ACP state.

**Certification** Claims for preferential treatment must be supported by movement certificates EUR 1 or EUR 2.

*GSP – United States, Canada, Japan and other ‘preference giving’ countries*

GSP stands for the ‘Generalised System of Preferences’ whereby industrialised nations, called the ‘donor countries’, grant preferential treatment to imports from developing countries, called ‘beneficiary countries’, which include Samoa. It is a unilateral scheme whereby beneficiary countries do not have to grant similar or reciprocal preferences to donor countries.

The concessions given provide preferential access to most developing countries in the form of duty-free entry or reductions from ‘most favoured nation’ rates of duty, or a combination of both. These concessions and the terms which govern them differ from country to country.

**Product coverage** In general, the products covered by the schemes include a whole range of specified industrial manufactured, semi-manufactured products and agricultural products.

Safeguard mechanisms exist in the various schemes to prevent serious disadvantage to local manufacturers of products covered under the GSP. These may take the form of quantitative limitations or removal of GSP benefits for specific products.

However, Samoa as a ‘least developed country’ (LDC) is generally allowed duty-free access to most of the donor countries.

**Rules of origin** Generally, goods eligible for GSP treatment must be wholly obtained in a beneficiary country; or, in the case of goods manufactured by the beneficiary country from imported components, meet the proceeds criterion; or meet the percentage criterion imposed by others, i.e. the Japanese, Australian, New Zealand and Canadian schemes contain a ‘donor country content rule’ under which raw materials imported from these countries are considered as originating from the beneficiary country.

**Certification** All ‘preference giving’ countries except Australia require completion of Certificate of Origin Form A. This form is obtainable at the Department of Trade, Commerce and Industry (DTCI).

(Source: Trade, Commerce & Industry – Guide to Investment)

(h) **Anti-avoidance legislation**

Samoa has not enacted any anti-avoidance laws.

(i) **Credit for overseas taxes**

Credit is allowed where foreign taxes are paid on income assessed to be taxed in Samoa.

### 5.3 Estate duty, inheritance and gift taxes

Estate duty, inheritance and gift taxes have been abolished.

### 5.4 Indirect taxes

The present tariff structure provides nominal rates applied to a wider range of fixed items, essential materials and equipment, with intermediate and high rates of duty on semi-luxury goods and luxury goods. The Customs Tariff Act 1975, as amended, which regulates customs duties, applies to all products except some agricultural products. The highest rate of duty is 20%. The Excise Tax Rate Act 1984, which regulates excise duties, is applied equally to imported and domestically produced goods of the same type. The highest duty is 20% applied to alcohol drinks, tobacco products and motor vehicles with an engine capacity of 2,000cc. A departure tax of SAT30 (or approximately US\$10) is levied at the international airport.

### 5.5 Social security

There are two statutory corporations responsible for social security for the labour force, these are the Samoa National Provident Fund and the Accident Compensation Board. Pursuant to the statute forming the legal basis of the Samoa National Provident Fund, an employer is obliged to contribute to the fund at 5% of the gross earnings of each Samoa resident employer. Moreover, a 5% contribution by the employee is deductible from wages. The 10% contribution must be remitted to the authorities within seven days of the pay period. The Samoa Accident Compensation Board was set up to provide benefits in case of injury, sickness and death in the course of employment. This scheme is funded by a 1% levy paid by the employer from the net wage of the employee.

### 5.6 Other taxes/business licences

An annual license fee is payable by all persons (including companies) which carry on economic activity in Samoa pursuant to the Business License Ordinance 1960:

- individuals SAT220;
- companies SAT500.

Local commercial banks and offshore entities are not subject to the Ordinance.

## 6. Exchange control regulations

The level of the exchange rate is determined daily by the Central Bank of Samoa. Changes are made in the light of movements in the prices and

exchange rates of Samoa's major trading partners. There are six currencies in the exchange rate basket – US, New Zealand and Australian dollars, the euro, Fijian dollars and the Japanese Yen.

The currency and exchange control regulations require Central Bank approval for the repatriation of overseas capital and profits.

As part and parcel of the fiscal and monetary measures undertaken by the Central Bank, the regulations forbid any person to engage in illegal trade in foreign exchange. In Samoa, all deals in foreign exchange are carried out by the Central Bank through which all foreign exchange must pass. Moreover, the Central Bank prescribes prices for the sale or purchase of foreign currency.

Since January 1998, the exchange control regulations have been revised and relaxed. For instance, there is no longer a limit imposed on imports brought in under open account (from the previous allowable limit of \$10,000) and it is no longer a requirement to establish letters of credit for the payment of import consignments, irrespective of cif values, unless specifically requested by a supplier.

Furthermore, the Exchange Control Regulations 1999 were signed into law with effect from 6 August 1999 and update the 1961 regulations previously applied. The aim of the revision is to ensure that business not contemplated or possible in 1961 is appropriately covered by the regulations. At the same time, the opportunity has been taken to increase competition in the area of foreign currency dealings by introducing formal licensing procedures for foreign exchange dealers. This will permit appropriately licensed dealers, as well as the commercial banks, to undertake foreign currency exchange operations.

## **7. Special categories of company**

A corporate entity including an international company incorporated under the International Companies Act 1987 may apply for an offshore banking licence pursuant to the Offshore Banking Act 1987.

### **7.1 Offshore banking licences**

The Offshore Banking Act 1987 governs the licensing of companies who wish to carry on offshore banking business from within Samoa. The Offshore Banking Amendment Act, 1998, creates a new post of Inspector of Offshore Banks to be responsible for the day-to-day regulation and supervision of offshore banks, such responsibility being formerly discharged by the Registrar of International and Foreign Companies. The licensing and disciplinary powers continue to reside with the Minister of Finance.

(a) **Name**

Every licensee must use as part of its description or title the word 'bank' or one or more of its derivatives in any language.

(b) **Restrictions**

General restrictions applicable to every licensee include the following:

- (i) it must not conduct business in the Samoan currency;
- (ii) it must not transact any banking business with any persons other than non-residents;
- (iii) it must not advertise or solicit banking business in Samoa;
- (iv) it must not transact any business otherwise than in accordance with the terms and conditions of its licence and the Act.

(c) **Classes of licence**

There are three classes of licence:

- (i) 'A' class licences (B1);
- (ii) 'B' class licences (B1); and
- (iii) 'B' class licences (B2).

*A class licences*

A class licences are granted only to companies with an aggregate of capital issued and paid up in cash and unimpaired reserves of at least US\$10 million. Such a licence carries the right to establish and operate a business office in Samoa and enables a company to transact business through that office or through a registered trustee company.

An A class license holder which wishes to establish a domestic company to transact onshore banking business must apply to the Central Bank of Samoa for approval. It is prohibited from granting any advances against the security of its own shares and any unsecured loans exceeding US\$5,000 or 1% of its paid-up capital and unimpaired reserves (whichever is the greater) to related parties which include directors, shareholders and their families.

*B1 class licence*

The B class licence (B1) is granted under section 7(1)(a) of the Act to companies with an aggregate of capital issued and paid up in cash

and unimpaired reserves of at least US\$2 million. The holder can transact only such offshore banking business as may be specified in the licence and only in the currencies specified therein. It must transact business through a registered trustee company unless the Minister of Finance has authorised it to establish, maintain and operate a business offshore in Samoa. It is not allowed to grant any advance against the security of its own shares. It can accept a minimum deposit dependent on its operations and specified in its licence. It is not allowed to grant outstanding unsecured advances totalling more than US\$5,000 or 1% of its paid-up capital or unimpaired reserves (whichever is greater) to related parties which include directors, shareholders and their families.

*B2 class licence*

The B class licence (B2) is granted under section 7(1)(b) of the Act to companies which have an aggregate of capital issued and paid up in cash or unimpaired reserves of at least US\$250,000. The holder can transact only such offshore banking business as may be specified in the licence through a registered trustee company and only in the currency or currencies specified therein and can accept deposits only from those persons or entities whose names are listed in the undertaking accompanying the licence application. It cannot solicit or accept deposits from the public nor can it allow any chequing facilities.

(d) **Renewal**

All renewal applications are required to be filed together with the prescribed fees two months prior to expiry. An A class licence is valid for two years but is subject to payment of an annual fee. Both types of B class licence are renewable annually. A licensee has no right of renewal of his licence but refusal to renew will be exceptional if a licensee has complied with his obligations under the Act and there have been no material changes in the particulars submitted to the Registrar since the grant of the licence or in the nature of the licensee's business.

(e) **Accounts and audit**

Every licensee is required under the provisions of the Offshore Banking Amendment Act 1998 to keep accounting records in Samoa. For existing licensees, the requirement extends to the two financial years before the commencement date of the amendments (i.e. July 1998).

Every licensee is required to appoint an auditor to be approved by the Inspector and to submit audited accounts within six months of

the end of its financial year and an annual return in the prescribed form every year. The 1998 amendments require A class and B1 class banking licensees to file quarterly financial returns and B2 class banking licensees to file half-yearly financial returns with the Inspector in the prescribed form.

In making his report the auditor is required to state in his opinion whether:

- the licensee is carrying on business in accordance with the terms of licence; and
- the quarterly or half-yearly returns filed by the licensee were correctly completed.

In addition, the auditor is required to report immediately to the Inspector information about the licensee's affairs, if he is of the opinion that:

- (i) the licensee is insolvent or likely to become insolvent; or
- (ii) a criminal offence involving fraud or dishonesty has been committed; or
- (iii) he is unable to confirm claims of creditors are covered by the licensee's assets.

An approved auditor for the purposes of the Act is either a local auditor registered under the Public Accountants Act 1984 or one of the big five international accounting firms, and must be registered under the International Companies Act 1987.

The Act allows the Minister of Finance to take appropriate measures against the licensee in the following circumstances:

- (i) where the licensee is carrying on business in a manner detrimental to the public interest or interest of the depositors or creditors;
- (ii) where the licensee is unable to meet its obligations as they fall due;
- (iii) where the licensee has failed to comply with the Act or any directive of the Minister.

Such measures include imposing conditions on a licensee, the removal or replacement of any director or officer and the appointment of a receiver or manager to assume control of the licensee's business.

The Act further allows the Minister to appoint one or more qualified persons to carry out an official examination, under conditions of secrecy, of the books, accounting and other records of a licensee where there is reason to believe that the offshore banking business is being carried on in a manner detrimental to depositors or creditors

or it has insufficient assets to cover its liabilities or it is contravening the provisions of the Act.

The Minister may require a licensee to effect an insurance indemnity policy against certain risks, including the dishonesty of employees.

## 7.2 Trustee companies

The Trustee Companies Act 1987 provides for a company incorporated as a domestic company to be registered to carry on business as a trustee company, servicing only non-residents of Samoa. The Act further outlines the powers of a trustee company to act as an executor or as an administrator of a deceased person's estate, or as a sole or joint trustee or agent of a trust. It also sets out the rights of an executor or trustee to delegate to a trustee company such of their powers as they may lawfully delegate and the rights of the trustee company to delegate its functions to a director or the secretary of the company.

A wholly owned subsidiary, with the written approval of the Minister of Finance and for the purposes of the trustee company's business, may be nominated to act as trustee or nominee in the provision of services under the International Companies Act and such subsidiary company shall not be required to be registered as a trustee company provided it remains wholly controlled and owned by the trustee company.

All monies paid to a trustee company under a trust must be held separate from its own monies and in trust for the purpose for which they were paid.

A trustee company may be granted a certificate of pioneer status where, in the opinion of the Minister, its activities have been or are likely to be of exceptional benefit to the development of the offshore finance centre in its promotion, development or the furtherance of the purposes of any of the Offshore Centres Acts. The holder of a certificate of pioneer status enjoys tax exemptions for up to five years.

### (a) Application

- Application for registration is made to the Minister of Finance through the Registrar of International and Foreign Companies with the prescribed fee. If the company's head office or registered office is outside Samoa, it must designate a principal office in Samoa and two authorised agents who are subject, in their personal capacity, to the jurisdiction of Samoa.

### (b) Capital

A trustee company must have an aggregate of capital issued and paid up in cash or unimpaired reserves of not less than SAT500,000 (approximately US\$170,000) or its equivalent in any approved currency.

(c) **Accounts and audit**

The accounts of a trustee company must be audited at least once a year and a copy of the auditor's report submitted to the Registrar within six months of the end of the company's financial year, together with an annual report.

(d) **Transfer of shares**

A trustee company may not issue bearer shares or share warrants to bearer. Nor can it issue or legally or beneficially transfer any of its shares or securities without the prior written approval of the Minister.

(e) **Cancellation of licence**

A trustee company's licence may be cancelled if it has contravened or failed to comply with any condition of registration; is in breach of any provisions of the Act; has contravened any other law which imposes duties or obligations upon it or it has committed a criminal offence anywhere, and the Minister considers that it is undesirable that it should continue to be registered. The company has a right to appeal to the court against a decision to cancel its licence.

### 7.3 **International insurance companies**

The International Insurance Act 1989, as amended, regulates offshore insurance business carried on by international or foreign companies registered under the International Companies Act 1987.

(a) **Name**

The use of words which connote insurance business, such as 'insurance', 'indemnity', 'guarantee', 'reinsurance', etc. is restricted to companies licensed under the International Insurance Act 1989 or the Insurance Act 1976.

(b) **Application**

Applications are made to the Registrar of International Insurance and the applicant company is required to produce evidence of its financial standing, share ownership, police clearances and references. Registration fees vary and depend on the category of business carried on. Registration is renewable every 12 months on payment of the prescribed fee.

(c) **Capital**

Applicant companies must have a minimum issued capital and unimpaired reserves. For general insurance business, the aggregate is US\$500,000; for long-term business US\$500,000; for reinsurance business US\$200,000; and for captive business US\$100,000. A registered insurer carrying on only the latter two categories of business is not required to hold the issued capital or reserves in approved securities located or effected in Samoa or elsewhere. A list of approved securities may be obtained from the Registrar.

(d) **Accounts and audit**

A registered insurer is required to keep and maintain at its principal place of business in Samoa (or such other place as may be authorised) a full, true and complete record of its accounting and policy transactions and of its financial position.

A registered insurer must appoint an auditor and is required to submit an annual return to the Registrar every calendar year, with its audited annual accounts and auditor's report which must confirm that the insurer has complied with the minimum capital and solvency margin requirements within six months of its financial year end.

(e) **Statutory and long-term business funds**

A registered insurer may establish and maintain one or more statutory funds in respect of part or parts of its insurance business and, with the written consent of the owner of a policy, may determine that a policy relates to a particular statutory fund.

A registered insurer carrying on long-term business is required to establish a long-term business fund, into an appropriately named sub-fund of which all receipts in respect of each sub-class of such business shall be paid. Transfers of assets from long-term business funds and declarations or payment of dividends to any person other than a policy holder, are strictly controlled.

Books and business records must be maintained in such a manner that the assets and liabilities of all statutory and long-term business funds can be readily identified. Such assets are not available to meet any liabilities or expenses of the registered insurer other than the liabilities and expenses of the insurance business to which the fund relates, and no mortgages can be created thereon without the consent of all the owners of policies issued in respect of the insurance business to which the particular fund relates. The assets of a statutory or long-term business fund must be kept distinct and separate from other assets.

A registered insurer carrying on long-term business is required to file an actuarial valuation of its assets and liabilities every two years.

A transfer of a registered insurer's long-term business may be effected but the sanction of a court is needed.

(f) **Solvency margins**

Registered insurers carrying on long-term and general insurance business are required to ensure that the value of their assets exceeds their liabilities by the following amounts:

- (i) US\$150,000 for general insurance business only;
- (ii) US\$250,000 for long-term insurance business only;
- (iii) US\$400,000 for both long-term and general insurance business.

Registered insurers carrying on only reinsurance or captive insurance business may be required to have a surplus of assets over liabilities of not less than US\$100,000 and to satisfy the Registrar of their financial stability.

(g) **Restrictions**

A registered insurer is not allowed to issue bearer shares or share warrants to bearer or to carry on domestic insurance business nor any other activities otherwise than for the purposes of its offshore insurance business. No advertisements which are misleading as regards a registered insurer's assets, corporate structure or financial standing are allowed to be used; nor must insurance business be carried out under a misleading name or the name of any other established business. A company carrying on only captive insurance cannot accept business from or insure any person who is not a parent or affiliated company without the authority of the Registrar.

(h) **Management**

Every registered insurer shall have management in Samoa or appoint a registered insurance manager who has adequate knowledge and experience of the insurance business carried on. An insurance manager must be registered and provide such documents and information to satisfy the Registrar that he is a fit and proper person and has, or has available, adequate knowledge and expertise so as to provide satisfactory insurance management services in Samoa.

A registered insurer authorised to carry on only captive insurance business must appoint a registered insurance manager in Samoa with adequate knowledge and experience of the insurance business

carried on or to be carried on, unless the company is authorised by the Minister to maintain a permanent establishment in Samoa.

(i) **Transfer of shares**

Any transfer of existing shares or securities or issue of new shares or securities (including a transfer or disposition resulting in any change in beneficial ownership of a registered insurer) requires prior written approval of the Registrar, provided the latter may exempt any registered insurer from such requirements, or impose such terms and conditions as may be deemed necessary.

(j) **Inspections and use of information**

The Registrar may require a registered insurer to provide him with any information and documents relating to the insurer's business. While the Act maintains secrecy provisions, there are certain statutory exemptions which allow regulator-to-regulator disclosure for the effective supervision of registered insurers. This allows the Registrar to disclose to a foreign insurance supervisory authority, or any other similar regulatory authority, information about the registered insurer on strict terms of confidentiality.

An Inspector may be appointed with wide powers of investigation if there is good reason to believe that the registered insurer is carrying on its business in a manner prejudicial to the interest of its policy holders or has become insolvent or it is in contravention of the Act.

Information obtained by or provided to the Registrar and/or an appointed Inspector is confidential and can only be revealed to duly authorised officers of the government for the purposes of carrying out their duties as such officers.

(k) **Liquidation**

A registered insurer may only be wound up compulsorily and on a petition by the Registrar except by leave of the courts. Special provisions apply regarding the winding-up of a registered insurer carrying on long-term business.

## Appendix 1: Summary of main fees

	<i>Application US\$</i>	<i>Issue of Licence US\$</i>	<i>Annual Renewal US\$</i>
International company .....	300.00	-	300.00
Long-term company which registers for a period of:			
5 years .....	1,000.00		1,000.00
10 years .....	1,500.00		1,500.00
20 years .....	2,000.00		2,000.00
Limited life international company .....	300.00		300.00
International partnership and limited partnership .....	150.00		150.00
Long-term international partnership and limited partnership which registers for a period of:			
5 years .....	500.00		500.00
10 years .....	800.00		800.00
20 years .....	1,200.00		1,200.00
Redomiciled company .....	100.00	-	100.00
Foreign company .....	300.00	-	300.00
Approval in principle to redomicile a company .....	Nil	-	-
Registered company auditor .....	200.00	-	200.00
Reservation of company name (for 3 months) .....	10.00	-	-
Reservation of change of name and/or issue of replacement certificate .....	50.00	-	-
A class bank licence .....	7,500.00	10,000.00	17,500.00
B1 (s 7(1)(a)) class bank licence:			
With one currency .....	5,000.00	2,500.00	7,500.00
With two to five currencies .....	5,000.00	3,750.00	8,750.00
With more than five currencies .....	5,000.00	5,000.00	10,000.00
B2 (s 7(1)(b)) class bank licence .....	2,500.00	1,500.00	4,000.00
Trustee company licence .....	2,500.00	10,000.00	2,500.00
International trust .....	150.00	-	150.00
Registered insurer:			
Captive insurance business only .....	1,000.00	250.00	1,250.00
Reinsurance business only .....	1,000.00	1,000.00	2,000.00
General and/or long-term insurance business .....	1,500.00	1,500.00	3,000.00
All categories insurance business .....	1,500.00	2,000.00	3,500.00
Registered insurance manager .....	100.00	250.00	250.00