

SAMOA

SEGREGATED FUND INTERNATIONAL COMPANIES ACT 2000

(as amended, 2005)

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PART I - PRELIMINARY

Short title and commencement

- 1.(1)** This Act may be cited as the Segregated Fund International Companies Act 2000.
- (2)** This Act shall come into effect on the date it is assented to by the Head of State.

Interpretation

- 2.(1)** In this Act, unless the context otherwise requires -

“articles” means articles of association of a segregated fund international company:

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

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

“company” has the meaning ascribed to it in section 2 of the International Companies Act 1987:

“court” means the Supreme Court of Samoa:

“creditor” in relation to a segregated fund international company means any person capable of enforcing in Samoa any debt against that segregated fund international company or against the segregated assets attributable to a segregated fund of the segregated fund international company:

“debt” means any debt, whether actual or contingent but excludes any tax liability, fine or penalty or any liability under any public law imposed by any government, governmental or semi-governmental authority of a country (other than Samoa) and any other debt or obligation incapable of being enforced in Samoa:

“director” has the meaning ascribed to it in section 2 of the International Companies Act 1987:

“domestic company” means a company incorporated under the Companies Act 1955:

“insolvent” means unable to pay debts as they become due:

“International company” means a company incorporated or continued in Samoa pursuant to the International Companies Act 1987:

“international trust” means a trust registered under the International Trusts Act 1987:

“legal obligation” means any contractual or other monetary obligation which the relevant segregated fund international company has incurred, but excludes any taxation, fine or penalty or any liability under any public law imposed by any foreign government and any other debt or obligation incapable of being enforced in Samoa:

“liability” includes any debt or legal obligation:

“memorandum” has the meaning ascribed to it in section 2 of the International Companies Act 1987:

“Minister” means the Minister of Finance:

“non-segregated assets” of a segregated fund international company comprise the assets of the company

which are not segregated assets:

“officer” has the meaning ascribed to it under section 2 of the International Companies Act 1987:

“other membership interest” means any interest of a person where that interest arises from or in connection with the fact that the person is a member of a segregated fund international company:

“prescribed” means prescribed by or under this Act:

“receiver” includes a receiver appointed by or on behalf of a secured creditor without the aid of the Court and includes a manager appointed by or on behalf of a secured creditor or by the Court:

“receivership order” means an order of the Court under section 25 in relation to a segregated fund of a segregated fund international company:

“registered segregated fund manager” means a person appointed as such under section 21:

“Registrar” means the Registrar of International and Foreign Companies appointed under the International Companies Act 1987, and includes a Deputy Registrar:

“regulations” means regulations made under this Act:

“resident director” means an officer of a trustee company appointed to be such under section 20:

“segregated assets” of a segregated fund international company means the assets of the company attributable to the company’s segregated funds pursuant to section 13:

“segregated assets transfer order” means an order of the Court under section 22(10) sanctioning the transfer of the segregated assets attributable to any segregated fund of a segregated fund international company to another person:

“segregated fund” means a fund created by a segregated fund international company in the manner provided by this Act:

“segregated fund capital” means the proceeds of the issue of shares or other membership interests in a segregated fund and includes segregated fund share capital:

“segregated fund distribution” means a dividend or other payment or distribution of property liable to be made in respect of one or more classes of segregated fund shares or other membership interests pursuant to the provisions of section 14:

“segregated fund dividend” means a dividend payable by a segregated fund international company in respect of segregated fund shares pursuant to the provisions of section 14:

“segregated fund international company” means a company incorporated as, or converted into, a segregated fund international company in accordance with the provisions of this Act:

“segregated fund shares” means shares created and issued by a segregated fund international company in respect of one of its segregated funds pursuant to the provisions of section 14, the proceeds of the issue of which (the “segregated fund share capital”) shall be included in the segregated assets attributable to that segregated fund:

“segregated fund share capital” means the proceeds of the issue of segregated fund shares:

“transaction” means anything (including, without limitation, any agreement, arrangement, dealing, disposition, circumstance, event or relationship) whereby any liability arises or is imposed; and cognate expressions shall be construed accordingly:

“transfer” includes any form of disposition, alienation or conveyance and includes a declaration of trust:

“trustee company” has the meaning ascribed to it under section 2 of the International Companies Act 1987:

Subject to subsection (1) expressions used in this Act shall (unless the context requires otherwise) have the same meanings as in the International Companies Act 1987.

References in this Act to an enactment are references thereto as re-enacted (with or without modification), amended, extended or applied.

Where the provisions of this Act are inconsistent with the provisions of any Act, other than the Constitution of Samoa, the provisions of this Act shall prevail.

Restriction on interest in segregated fund international company

3.(1) No natural person who is a citizen or resident of or domiciled in Samoa and no company incorporated or registered in Samoa under the Companies Act 1955 (NZ) (except a trustee company), may hold shares beneficially, or hold any other form of beneficial interest, either individually or with another person or persons, in a segregated fund international company or in a segregated fund of a segregated fund international company incorporated or registered under this Act.

(2) For the purpose of this section, “non-resident” and “resident” shall have the same meaning as in the Off Shore Banking Act 1987.

Application of Act

4. Unless the context otherwise requires, no provision of this Act shall apply to a domestic company.

Application of International Companies Act 1987

5. The provisions of the International Companies Act 1987 shall, subject to the provisions of this Act, apply in relation to a segregated fund international company registered under this Act.

PART II - CONSTITUTION AND ADMINISTRATION OF SEGREGATED FUND INTERNATIONAL COMPANIES

Incorporation or registration of segregated fund international company

6.(1) A trustee company may apply to incorporate or register a company as a segregated fund international company or to convert an existing international company, if so authorised by its memorandum, into a segregated fund international company in accordance with the provisions of this Act.

Every segregated fund international company incorporated or registered or converted under this Act shall be a company limited by shares, a company limited by guarantee or a company limited by both shares and guarantee.

No segregated fund international company may issue bearer shares or share warrants to bearer and all shares issued by a segregated fund international company must be registered shares.

The memorandum of a company for which application has been made to incorporate or register the company as a segregated fund international company or to convert the company into a segregated fund international

company shall comply with section 8.

An application for incorporation or registration as a segregated fund international company shall be accompanied by-

The documentation required to be lodged under section 14(1) of the International Companies Act 1987;

A certificate by the trustee company lodging the application, stating that to the best of the trustee company's knowledge, all of the requirements of this Act have been complied with; and

The prescribed registration fee.

An application for registration as a segregated fund international company may also be made under subsection (1) at the same time that an application is made to register a company by way of continuance under section 16 of the International Companies Act 1987.

The Registrar, if satisfied that the company complies with the provisions of this Act, shall register the company as a segregated fund international company and issue a certificate of incorporation, or certificate of registration, if registration is made by way of continuance under section 16 of the International Companies Act or by conversion of an international company, under his hand and seal. A certificate of incorporation or registration as the case may be, shall be conclusive evidence that all the requirements of this Act in respect of incorporation and of matters precedent and incidental thereto have been complied with, and that the company referred therein was duly incorporated and registered under this Act.

Name of segregated fund international company

7. The name of a segregated fund international company shall, without prejudice to the provisions of section 22 of the International Companies Act 1987, include the expression "Segregated Fund", "SF", "SFC" or any cognate expression approved in writing by the Registrar.

Memorandum of segregated fund international company

8.(1) In addition to the matters required under the International Companies Act 1987, the memorandum of a segregated fund international company shall state -

That it is a segregated fund international company;

That each segregated fund that is created will bear its own distinctive name or designation;
and

The name of the trustee company that is to be the first registered segregated fund manager of the company.

(2) An international company may, in order to comply with subsection (1), alter its memorandum by special resolution.

Legal status of segregated fund international company

9.(1) Notwithstanding that a segregated fund international company may have created one or more funds pursuant to the provisions of this Act a segregated fund international company is a single legal person.

(2) For the avoidance of doubt, any segregated fund created by a segregated fund international company is

not a legal person separate from that company.

Creation of segregated funds

10.(1) Subject to the provisions of this Act a segregated fund international company may create one or more segregated funds.

A segregated fund international company may only create segregated funds through a registered segregated fund manager appointed pursuant to section 21 of this Act.

Each segregated fund created by a segregated fund international company shall have its own distinct name or designation.

The registered segregated fund manager shall apply to the Registrar for registration of each fund created by a segregated fund international company. An application for registration of a segregated fund shall specify the name or designation of the segregated fund and such other information as may be prescribed by regulation. An application under this subsection shall be accompanied by the prescribed registration fee.

Upon filing of an application under subsection (4), the Registrar shall issue a certificate of registration under his hand and seal which shall be conclusive evidence that the requirements of this Act in respect of registration of a segregated fund have been complied with and that the segregated fund referred to therein has been duly registered under this Act.

No segregated fund created by a segregated fund international company shall be valid until registered by the Registrar pursuant to the provisions of this section.

The creation of a segregated fund does not of itself create any trust and, subject to any contract, declaration of trust or other obligation to the contrary, a segregated fund international company remains the legal and beneficial owner of the assets attributable to the segregated fund.

Renewal of registration

11.(1) Every segregated fund international company shall be liable to pay to the Registrar on the 30th day of November in each year following the year in which it is incorporated or registered the prescribed annual renewal fee.

Every segregated fund international company shall be liable to pay to the Registrar on the 30th day of November in each year following the year in which each segregated fund was registered the prescribed annual renewal fee for each segregated fund registered by the segregated fund international company.

In the event that a segregated fund international company fails to renew its registration within the prescribed period the provisions of section 197 of the International Companies Act 1987 shall apply.

Revocation of registration and consequences

12.(1) The Registrar shall revoke the registration of a segregated fund where the segregated fund international company which created the segregated fund has failed to renew its registration and that company has been dissolved under the provisions of section 197 of the International Companies Act 1987.

Where the registration of a segregated fund has not been renewed by the segregated fund international company as required by section 11(2) of the Act and the segregated fund manager has not filed notice of dissolution of that segregated fund pursuant to section 22(14), the Registrar shall send by registered post addressed to the segregated fund international company at its registered office in Samoa a notice to that effect and stating that if the said breach of section 11(2) is not rectified or notice of dissolution under section 22(14) is not filed within

two months from the date thereof the Registrar shall revoke the registration of the segregated fund.

Where the Registrar has reasonable cause to believe that -

A segregated fund international company does not have a resident director as required by section 20; or

A segregated fund international company does not have a registered fund manager as required by section 21,

he may send by registered post addressed to the segregated fund international company at its registered office in Samoa a notice to that effect and stating that if the said breach of section 20 or section 21 as the case may be is not rectified within two months from the date thereof the Registrar will revoke the registration of each segregated fund created by that segregated fund international company.

At the expiration of the time specified in the notice sent to a segregated fund international company pursuant to either subsection (2) or (3), or such further time as the Registrar deems fit, he may, unless cause to the contrary has been previously shown, revoke the registration of each segregated fund created by that segregated fund international company.

Where registration of a segregated fund -

Is revoked under subsection (1); or

Has been revoked under subsection (4) and the segregated fund international company that created that segregated fund has been dissolved subsequent to such revocation,

and there remains any property, real or personal, including those in action, and whether inside or outside Samoa, which formed part of the segregated assets of that segregated fund and which has not been disposed of or otherwise dealt with prior to revocation of registration or dissolution of the segregated fund international company, such property, notwithstanding any enactment or rule of law to the contrary and by the operation of this section, shall be and become vested in the Registrar for all the estate and interest therein, legal or equitable, of the segregated fund international company or its liquidator at the date the segregated fund international company was dissolved, together with all claims, rights and remedies which the segregated fund international company or its liquidator then had in respect thereof.

Notwithstanding any enactment or rule of law to the contrary and subject to the provisions of subsection (5), where the registration of a segregated fund has been revoked pursuant to subsection (4) and a receiver has not been appointed under a receivership order made pursuant to Part III of this Act, any property, real or personal, including choses in action, and whether inside or outside Samoa, which formed part of the segregated assets of that segregated fund and which has not been disposed of or otherwise dealt with by the segregated fund manager within six months after the date of revocation of registration, shall by operation of this section, be and become vested in the segregated fund international company on that date being six months after the date of revocation of registration. Any segregated assets of a segregated fund so vested in the segregated fund international company shall be held by the segregated fund international company in trust for a further period of 2 years to satisfy the valid claims of creditors and members against such segregated assets. Upon the expiry of the said 2 year period any remaining segregated assets which have not been so distributed and are not subject to any valid claim by the creditors or members of the deregistered segregated fund shall vest absolutely in the segregated fund international company.

The Registrar may sell or otherwise dispose of or deal with property vested in him pursuant to subsection (5) either solely or in concurrence with any other person who may have an interest in the same in such manner, for such consideration and upon such terms and conditions as he thinks fit with power to rescind any contract and resell or otherwise dispose of or deal with such contracts, instruments and documents as he thinks necessary.

The moneys received by the Registrar in the exercise of any the powers conferred on him by this section shall be applied first in defraying all costs, expenses, fees and commissions incidental thereto and thereafter shall be dealt with under the Unclaimed Money Act 1964.

Any action for or in respect of any moneys paid under the provisions of subsection (8) shall be against the Registrar as the nominal defendant and shall be instituted within 2 years next after the date of revocation of registration of the segregated fund after which time no such action shall be instituted and the claim shall be

absolutely barred.

Assets of segregated fund international company

13.(1) The assets of a segregated fund international company shall be divided into segregated assets and non-segregated assets.

The segregated assets of a segregated fund international company comprise the assets of the company attributable to the segregated funds of the company.

The assets attributable to each segregated fund of a segregated fund international company comprise-

Assets represented by the proceeds of the issue pursuant to section 14 of segregated fund capital and reserves attributable to that segregated fund; and

All other assets attributable to that segregated fund.

(4) The directors of a segregated fund international company shall -

Keep segregated assets separate and separately identifiable from non-segregated assets; and

Keep segregated assets attributable to each segregated fund separate and separately identifiable from segregated assets attributable to other segregated funds.

For the purposes of subsection (3), the expression “reserves” includes retained earning, capital reserves and share premiums.

The non-segregated assets of a segregated fund international company comprise the assets of the company which are not segregated assets.

Income, receipts and other property or rights of or acquired by a segregated fund international company not otherwise attributable to any segregated fund shall be applied to and comprised in the company’s non-segregated assets.

Share and membership capital of segregated fund international company

14.(1) A segregated fund international company may allocate part or all of its registered share capital to any of its segregated funds and may, in respect of any of such segregated funds, create and issue shares or other membership interests. The segregated fund shares issued in respect of each segregated fund shall constitute a separate class of shares. The proceeds of the issue of such segregated fund shares shall be included in the segregated assets attributable to the segregated fund in respect of which the segregated fund shares were issued. The proceeds of the issue of other membership interests shall be included in the capital of the segregated fund in respect of which they were issued or, if there be no such fund, the proceeds shall be treated as non-segregated assets of the company.

The proceeds of the issue of shares other than segregated fund shares created and issued by a segregated fund international company shall be comprised in the company’s non-segregated assets.

A segregated fund international company may pay a dividend or other payment in respect of one or more classes of segregated fund shares or other membership interests.

Segregated fund distributions may be paid in respect of segregated funds shares or other membership interests by reference only to the profits attributable to the segregated fund in respect of which the segregated fund shares or other membership interests were issued or in respect of the segregated assets and liabilities attributable to the segregated fund in respect of which the segregated fund shares or other membership interests were issued, and may include capital distributions, dividends and bonus shares.

Unless the context requires otherwise, references in the International Companies Act 1987 to shares include references to segregated fund shares.

For the avoidance of doubt, nothing in this section shall be construed to prevent a payment to a person who is not a member of a segregated fund where that payment arises out of a legal obligation in respect of that segregated fund.

Limitation of liabilities of segregated fund international company

15.(1) Where a liability of a segregated fund international company to a creditor of that segregated fund international company arises from a transaction, or is otherwise imposed by this Act, in respect of a particular segregated fund -

That liability of the company shall extend only to, and that creditor shall, in respect of that liability, be entitled to have recourse only to, the segregated assets attributable to that segregated fund; and

That liability of the company shall not extend to, and that creditor shall not, in respect of that liability, be entitled to have recourse to, the segregated assets attributable to any other segregated fund.

(2) Where a liability of a segregated fund international company to a creditor -

Arises otherwise than from a transaction in respect of a particular segregated fund; or

Is imposed by this Act otherwise than in respect of a particular segregated fund,

that liability of the company shall extend only to, and that creditor shall, in respect of that liability, be entitled to have recourse only to, the company's non-segregated assets.

Liabilities of a segregated fund international company not otherwise attributable to any of its segregated funds shall be discharged from the company's non-segregated assets.

Nothing in this section shall be construed to grant to any person security over any assets or to affect that priority of any security granted to any secured creditor of a segregated fund or of a segregated fund international company.

Creditors of segregated fund international company

16.(1) For the purposes of section 15, a transaction shall be deemed to be in respect to a particular segregated fund if the segregated fund international company has identified or specified that the transaction is in relation to that segregated fund, or if the creditor had actual or constructive notice that the segregated fund international company had entered into the transaction or agreement on behalf of that segregated fund.

(2) Segregated assets attributable to a segregated fund of a segregated fund international company -

Shall only be available to the creditors of the company who are creditors in respect of that segregated fund and who shall thereby be entitled, in conformity with the provisions of this Act, to have recourse to the segregated assets attributable to that segregated fund; and

Shall be absolutely protected from the creditors of the company who are not creditors in respect of that segregated fund and who accordingly shall not be entitled to have recourse to the segregated assets attributable to that segregated fund.

Company to inform persons they are dealing with segregated fund international company

17.(1) A segregated fund international company shall -

Inform any person with whom it transacts where such transaction creates any liability against the segregated fund international company, that it is a segregated fund international company; and

For the purposes of that transaction, identify or specify the segregated fund in respect of which that person is transacting, unless that transaction is not a transaction in respect of a particular segregated fund.

(2) If, in contravention of subsection (1), a segregated fund international company -

Fails to inform a person that he is transacting with a segregated fund international company, and that person is otherwise unaware that, and has no reasonable grounds to believe that, he is transacting with a segregated fund international company; or

Fails to identify or specify the segregated fund in respect of which a person is transacting, and that person is otherwise unaware of, and has no reasonable basis of knowing, which segregated fund he is transacting with;

then, in either such case -

the directors shall (notwithstanding any provision to the contrary in the company's articles or in any contract with the company or otherwise) incur personal liability to that person in respect of the transaction; and

the directors shall have a right of indemnity against the non-segregated assets of the company, unless they were fraudulent, reckless or negligent, or acted in bad faith.

(3) Notwithstanding the provisions of subsection (2)(i), the Court may relieve a director of all or part of his personal liability thereunder if he satisfies the Court that he ought fairly to be so relieved because -

He was not aware of the circumstances giving rise to his liability and, in being not so aware, he was neither fraudulent, reckless or negligent, nor acted in bad faith; or

He expressly objected, and exercised such rights as he had as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability.

Where, pursuant to the provisions of subsection (3), the Court relieves a director of all or part of his personal liability under subsection (2)(i), the Court may order that the liability in question shall instead be met from such of the segregated or non-segregated assets of the segregated fund international company as may be specified in the order.

Any provision in the articles of a segregated fund international company, and any other contractual provision under which the segregated fund international company may be liable, which purports to indemnify directors in respect of conduct which would otherwise invalidate an indemnity against non-segregated assets by virtue of subsection (2)(ii), shall be void.

The provisions of this section are without prejudice to section 89A of the International Companies Act 1987.

Registration of charges over assets of segregated fund international company

18.(1) Any person who has an interest in a charge created by a segregated fund international company may apply for registration of the charge pursuant to the provisions of Division 4 of Part IV of the International Companies Act 1987. Any application for registration of a company shall specify whether the assets are non-

segregated assets or segregated assets and if against segregated assets shall state the name of the registered segregated fund to which such segregated assets are attributed.

A charge created against the segregated assets of a registered segregated fund of a segregated fund international company shall be registered as a separate and separately identifiable charge against the registered segregated fund and not against the other segregated and non-segregated assets of the segregated fund international company.

The provisions of Division 4 of Part IV of the International Companies Act 1987 when applied to a segregated fund international company shall be interpreted and applied separately to distinguish between segregated and non-segregated assets of a segregated fund international company.

Prohibited activities of segregated fund international company

19. A segregated fund international company shall not carry on the business of banking, insurance or acting as a trustee company unless it is licensed or otherwise permitted to do so under the laws currently in force in Samoa. The provisions of section 7(2) of the International Companies Act 1987 shall apply to a segregated fund international company.

Resident director

20. Every segregated fund international company shall appoint and maintain at all times a resident director who shall be an officer of a registered segregated fund manager. A corporation shall not be the sole resident director of a segregated fund international company.

Registered segregated fund manager

21.(1) Every segregated fund international company shall appoint and maintain at all times a registered segregated fund manager in Samoa who shall be a trustee company registered under the Trustee Companies Act 1987.

(2) The registered segregated fund manager shall -

Ensure segregated funds are created and registered in accordance with this Act;

Ensure that segregated funds are administered in compliance with this Act;

Keep records and accounts which shall identify shares or membership interests of shareholders or other members in respect of each segregated fund; and

Keep records and accounts which shall identify all creditors, liabilities and assets of each segregated fund.

(3) Any contract under which a segregated fund manager is appointed shall be deemed to include a covenant imposing upon the segregated fund manager the duty to pay from the assets of the segregated fund all fees or fines required or prescribed for registration of that segregated fund and authorising that segregated fund manager to have recourse to the assets of that segregated fund for the purpose of ensuring that such fees or fines for registration are paid. Where the segregated fund manager pays any fees or fines for registration out of its own funds it shall have a corresponding lien on any asset of the segregated fund under its management.

Transfers or distributions of segregated assets from segregated fund international company

22.(1) Except as hereunder provided, no transfer or distribution of segregated assets attributable to any segregated fund of a segregated fund international company shall be made, otherwise than in the course of

business or for adequate consideration or pursuant to a legal obligation, unless the segregated fund manager of that segregated fund is satisfied on reasonable grounds that the provisions of the Articles, if any, requiring member approval of the proposed transfer or distribution have been complied with, and that either

All creditors of that segregated fund have had at least 30 days notice of the proposed transfer or distribution and no such creditor has objected to the proposed transfer or distribution; or

That the segregated fund will, immediately after the making of the transfer or distribution, satisfy the solvency test prescribed under subsection (15) in relation to that segregated fund.

For the purposes of subsection (1), notice of a proposed transfer or distribution may be given to the relevant creditors in respect of a segregated fund in the same manner as provided for a general meeting of members of the segregated fund international company and any notice of objection to the proposed transfer or distribution must be lodged at the registered office of the segregated fund manager no later than 30 days after notice of the proposed transfer or distribution was first given to the objecting creditor. Any remaining period of notice required for objections to be lodged under this section may be waived by unanimous consent in writing of creditors entitled to notice of the proposed transfer or distribution after they have received actual notice of the proposed transfer or distribution.

Before any transfer or distribution is made pursuant to subsection (1)(b), the segregated fund manager must sign a certificate stating that, in its opinion, the company will, immediately after the transfer is made, satisfy the solvency test in relation to that segregated fund and the grounds for that opinion.

If, before the transfer or distribution is made, the segregated fund manager ceases to be satisfied on reasonable grounds that the company will, immediately after the transfer is made, satisfy the solvency test in relation to that segregated fund, any transfer made by the company is deemed not to have been authorised.

Every segregated fund manager who fails to comply with subsection (3) of this section commits an offence and is liable to the penalty set out in section 30 of this Act.

Notwithstanding the foregoing provisions of this section and in the alternative thereto the directors or the registered segregated fund manager of a segregated fund international company, or any other interested party may apply to the Registrar for approval to transfer or distribute segregated assets attributable to any segregated fund of a segregated fund international company to another person, wherever resident or incorporated outside Samoa, (including an international company) and whether or not a segregated fund international company. Such application shall be in the prescribed form and shall -

Specify whether a majority by value of the creditors of the company who are entitled to recourse against the segregated assets attributable to the segregated fund have not objected to the transfer or distribution;

If any creditors have objected to the proposed transfer or distribution, the reasons why the transfer or distribution would not unfairly prejudice the rights and interests of those creditors; and

include such documentation as may be required to evidence (a) and (b).

An application under subsection (6) must be accompanied by the prescribed application fee.

Upon receipt of an application pursuant to subsection (6) the Registrar may -

(a) Approve a transfer or distribution of segregated assets attributable to a segregated fund of a segregated fund international company if he is satisfied -

that the creditors of the company entitled to have recourse to the segregated assets attributable to the segregated fund have consented to the transfer or distribution; or

that those creditors would not be unfairly prejudiced by the transfer or distribution;

that the company will, immediately after the making of the transfer or distribution, satisfy the solvency test in relation to that segregated fund;

(b) If the Registrar is not so satisfied, he may -

decline the application; or

determine that the application should be heard by the Court in accordance with subsection (9).

(9) If the Registrar has declined an application in accordance with subsection (8) of this section or has determined that the application should be heard by the Court in accordance with subsection (8)(b)(ii) or if the applicant is otherwise not satisfied with the decision of the Registrar under that subsection, the segregated fund manager or the directors of a segregated fund international company may apply to the Court for an order approving the transfer or distribution (“segregated assets transfer order”).

(10) The Court, on hearing an application for a segregated assets transfer order -

May make or decline to make a segregated assets transfer order; or

May make an interim order or adjourn the hearing, conditionally or unconditionally;

May dispense with any of the requirements of subsections (1) (6) or (8)(a).

The Court may attach such conditions as it thinks fit to a segregated assets transfer order, including conditions as to the discharging of claims of creditors entitled to have recourse to the segregated assets attributable to the segregated fund in relation to which the order is sought or the holding of reserves against contingent liabilities.

The Court may make a segregated assets transfer order in relation to a segregated fund of a segregated fund international company notwithstanding that -

A liquidator has been appointed to act in respect of the company or the company has passed a resolution for voluntary winding up;

A receivership order has been made in respect of the segregated fund or any other segregated fund of the company.

The provisions of this section are without prejudice to any power of a segregated fund international company lawfully to make payments from the segregated assets attributable to any segregated fund of the company to a person entitled, in conformity with the provisions of this Act, to have recourse to those segregated assets.

Where a transfer or distribution of segregated assets attributable to a segregated fund of a segregated fund international company made pursuant to this section results in the dissolution of the segregated fund, the registered segregated fund manager shall file with the Registrar a notice of dissolution in the prescribed form.

(15) (a) For the purposes of this Act, a company satisfies the solvency test in relation to a segregated fund if -

the company is able to pay, in accordance with this Act, all the debts attributable to that segregated fund as they become due in the normal course of business; and

the value of the assets attributable to that segregated fund is greater than the value of the liabilities attributable to that segregated fund including contingent liabilities.

(b) In determining for the purposes of this Act whether the value of the assets attributable to a segregated fund is greater than the value of the liabilities attributable

to that segregated fund including contingent liabilities, the segregated fund manager -

(i) must have regard to -

The most recent financial statements of the company that comply with the International Companies Act 1987; and

All other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and the value of the company's liabilities, including its contingent liabilities; and

(ii) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

(16) In determining, for the purposes of this section, the value of a contingent liability, account may be taken of -

The likelihood of the contingency occurring; and

Any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

Where a transfer or distribution is made in contravention of the requirements of this section, that transfer or distribution is not void but voidable within 2 years of the date of the contravening transfer or distribution at the instance of any or creditor of the relevant segregated fund but not so as to prejudice the rights of any party to a transaction who has acted without notice of any defect.

Nothing in this section shall be taken to limit the operation of any trust or to authorise any transfer or distribution of assets which would constitute a breach of trust.

Nothing in this section shall be construed to authorise the non-compliance by a segregated fund international company with any legal obligation attaching to the company in respect of the assets or business or undertakings or liabilities of a segregated fund.

Provisions in relation to liquidation of segregated fund international company

23.(1) Notwithstanding any statutory provision or rule of law to the contrary, in the liquidation of a segregated fund international company, the liquidator -

Shall be bound to deal with the company's assets in accordance with the requirements set out in paragraphs (a) and (b) of section 13(4); and

In discharge of the claims of creditors of the segregated fund international company, shall apply the company's assets to those entitled to have recourse thereto in conformity with the provisions of this Act.

Section 154 of the International Companies Act 1987 (which provides that a company's assets in a winding up shall be realised and applied in satisfaction of the company's liabilities and debts equally) shall not apply to the liquidation of a segregated fund international company, and the provisions of subsection (3) shall apply in lieu thereof in respect of the liquidation of a segregated fund international company.

The property of a segregated fund international company shall, on its winding up, be applied as follows -

The segregated assets attributable to each of the segregated funds of the segregated fund international company shall be applied firstly in satisfaction of the liabilities to the creditors of the company entitled to have recourse to those segregated assets attributable to the relevant segregated fund. The segregated assets of each separate segregated fund shall only be applied to satisfy the liabilities attributable to that segregated fund and not to satisfy the liabilities to creditors of any other segregated

fund;

The surplus segregated assets, if any, attributable to each segregated fund after satisfaction of the liabilities to creditors of the company pursuant to subsection (a) shall be distributed in accordance with the Articles to the holders of the segregated fund shares attributable to the relevant segregated fund or to such other persons who hold the membership interest in such segregated fund. The surplus segregated assets of each separate segregated fund shall only be distributed to the holders of the segregated fund shares or other membership interests in that segregated fund and shall not be distributed to the holders of the segregated fund shares or other membership interest in any other segregated fund;

The non-segregated assets of the segregated fund international company shall be applied in satisfaction of all of its remaining liabilities equally and subject to that application shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

PART III - RECEIVERS

Receivers generally

24.(1) In carrying out his duties a receiver shall be bound by section 15.

Notwithstanding any provision to the contrary in any debenture or other instrument pursuant to which a receiver is appointed, a segregated fund international company may only grant a charge over the segregated assets and undertakings held by the company for the segregated fund specified in the debenture or other instrument. A charge over the segregated assets of a segregated fund may only be granted in relation to the liabilities, assets and activities of that segregated fund.

If a receiver is appointed over the non-segregated assets of a segregated fund international company the powers, duties and responsibilities of that receiver shall, unless a further receivership order or appointment or receivership orders or appointments is or are made, only apply to the non-segregated assets of the segregated fund international company and not to any segregated assets or to the business or undertakings of any segregated fund.

If a receiver is appointed over the segregated assets of a segregated fund of a segregated fund international company, the powers, duties and responsibilities of that receiver under the International Companies Act 1987 shall be taken to apply only to the assets or business or undertakings or liabilities of that segregated fund and not to any segregated assets or business or undertakings or liabilities of any other segregated fund nor to the non-segregated assets or business or undertakings or liabilities of the segregated fund international company.

Receivership orders in relation to segregated funds

25.(1) Subject to the provisions of this section, if in relation to a segregated fund international company the Court is satisfied -

That the segregated assets attributable to a particular segregated fund of the company (when account is taken of the company's non-segregated assets, unless there are no creditors in respect of that segregated fund entitled to have recourse to the company's non-segregated assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that segregated fund;

That the making of an order under this section would achieve the purposes set out in subsection (3); or

That registration of the particular segregated fund has been revoked, pursuant to section 12, no more than 6 months prior to the date of the application,

the Court may make an order under this section (a “receivership order”) in respect of that segregated fund.

A receivership order may be made in respect of one or more segregated funds provided that that if the order is made in respect of more than one segregated fund, the Court must be satisfied that subsection (1) applies to each segregated fund in relation to which an order is made.

A receivership order is an order directing that the business and segregated assets of or attributable to a segregated fund (and no other assets) shall be managed by the receiver specified in the order for the purposes of -

The orderly winding up of the business of or attributable to the segregated funds; and

The distribution of the segregated assets attributable to the segregated fund to those entitled to have recourse thereto.

(4) A receivership order -

(a) May not be made if -

a liquidator has been appointed to act in respect of the segregated fund international company; or

the segregated fund international company has passed a resolution for voluntary winding up; and

(b) Shall cease to be of effect upon the appointment of a liquidator to act in respect of the segregated fund international company, but without prejudice to prior acts.

(5) No resolution for the voluntary winding up of a segregated fund international company any segregated fund of which is subject to a receivership order shall be effective without leave of the Court.

Applications for receivership orders

26. An application for a receivership order in respect of a segregated fund of a segregated fund international company may be made by -

The company;

The directors of the company;

Any creditor of the company in respect of that segregated fund;

Any holder of segregated fund shares or other membership interests in respect of that segregated fund;

The registered segregated fund manager of that segregated fund; or

The Registrar.

(2) The Court, on hearing an application -

For a receivership order; or

For leave, pursuant to section 25(5), for a resolution for voluntary winding up,

may make an interim order or adjourn the hearing, conditionally or unconditionally.

(3) Notice of an application to the Court for a receivership order in respect of a segregated fund of a segregated fund international company shall be served upon -

The company;

The registered segregated fund manager of the segregated fund;

The Registrar; and

Such other persons (if any) as the Court may direct,

who shall each be given an opportunity of making representations to the Court before the order is made.

Functions of receiver and effect of receivership order

27.(1) The receiver of a segregated fund appointed pursuant to an order of the Court -

May do all such things as may be necessary for the purposes set out in section 25(3); and

Shall have all the functions and powers of the registered segregated fund manager and the directors in respect of the business and segregated assets of or attributable to the segregated fund.

(2) The receiver may at any time apply to Court -

For directions as to the extent or exercise of any function or power;

For the receivership order to be discharged or varied; or

For an order as to any matter arising in the course of his receivership.

In exercising his functions and powers the receiver is deemed to act as the agent of the segregated fund international company, and shall not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent, or acts in bad faith.

Any person dealing with the receiver in good faith is not concerned to enquire whether the receiver is acting within his powers.

When an application has been made for, and during the period of operation of, a receivership order -

No proceedings may be instituted or continued by or against the segregated fund international company in relation to the segregated fund in respect of which the receivership order was made; and

No steps may be taken to enforce any security or in execution of legal process in respect of the business or segregated assets of or attributable to the segregated fund in respect of which the receivership order was made,

except by leave of the Court, which may be conditional or unconditional.

(6) During the period of operation of a receivership order - the functions and powers of the directors shall cease in respect of the business and segregated assets of or attributable to the segregated fund in respect of which the order was made.

Discharge and variation of receivership orders

28.(1) The Court shall not discharge a receivership order unless it appears to the Court that the purpose for

which the order was made has been achieved or substantially achieved or is incapable of achievement.

The Court, on hearing an application for the discharge or variation of a receivership order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

Upon the Court discharging a receivership order in respect of a segregated fund of a segregated fund international company on the ground that the purpose for which the order was made has been achieved or substantially achieved, the Court may direct that any payment made by the receiver to any creditor of the company in respect of that segregated fund shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that segregated fund; and the creditor's claims against the company in respect of that segregated fund shall be thereby deemed extinguished.

Nothing in subsection (3) shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the segregated fund international company.

Remuneration of receiver

29. The remuneration of a receiver appointed by order of the Court and any expenses properly incurred by him shall be payable, in priority to all other claims, from -

The segregated assets attributable to the segregated fund in respect of which the receiver was appointed; and

To the extent that these may be insufficient, the non-segregated assets of the segregated fund international company.

PART IV - GENERAL PROVISIONS

Offences

30.(1) Any person who knowingly and wilfully-

Does or authorises anything which by or under this Act he is forbidden to do;

Does not do or refuses to do something which by or under this Act he is required or directed to do; or

Otherwise contravenes or fails to comply with any provision of the Act,

commits an offence against this Act and, save as hereinafter provided in this section, shall be liable on conviction to a fine not exceeding 5 penalty units and in the case of a second or subsequent offence to a fine not exceeding 10 penalty units.

(2) Any person who commits an offence against the provisions, or any part of the provisions, of any one of section 13 or 22 shall be liable on conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 3 months or both in respect of each such offence and for each second or subsequent offence to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 6 months or to both.

Regulations

31. The Head of State, acting on the advice of Cabinet, may from time to time, make regulations prescribing all matters and things required or authorised by this Act to be prescribed or provided or which the necessary or convenient to be prescribed or provided, for the carrying out of, or the giving full effect to, the

provisions of this Act and its due administration including all or any of the following particular purposes -

The conduct of the business of segregated fund international companies;

The manner in which segregated fund international companies may carry on, or hold themselves out as carrying on, business;

The winding up or receivership of segregated fund international companies;

Prescribing forms to be used for the purposes of this Act and the matters to be specified in such forms;

Prescribing forms of applications and other notices under this Act; and

Fixing 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.

Immunity

32. No action shall lie against the Government or any statutory body or authority of Samoa, the Minister, the Authority, the Registrar or any person acting pursuant to any authority conferred by the Minister, the Authority or the Registrar, as the case may be, in respect of any 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.

Privacy

33. For the avoidance of doubt, the provisions of section 227 of the International Companies Act 1987 are hereby expressed to be applicable to a segregated fund international company and to a segregated fund of a segregated fund international company.