

# **SAMOA**

## **INTERNATIONAL INSURANCE ACT 1988**

*(Incorporating amendments to July 1998)*

*This document is an unofficial compilation of the International Insurance Act 1988 as amended by the Offshore Legislation Amendment Act 1990 and the Offshore Centre Legislation Amendment Act 1993 and the International Insurance Amendment Act 1998.*

*Whilst every effort has been made to ensure correctness, no responsibility is assumed or accepted for any error which may appear or be included nor for any alterations which may have been made subsequently to its compilation on 12th September 1991 and its update on 2nd April 1993 and July 1998.*

*Official authorised texts of the International Insurance Act 1988 and of subsequent amendments thereto may be obtained on request from the Registrar of International and Foreign Companies, PO Box 3265, Apia, Samoa (Fax No.: (685) 20 880) or from the Clerk to the Legislative Assembly, PO Box 1866, Apia, Samoa; Phone: (685) 21 811.*

**REGISTRAR OF INTERNATIONAL INSURANCE**

### **International Insurance Act 1988**

*(as amended by the Offshore Legislation Amendment Act 1990, the Offshore Centre Legislation Amendment Act 1993) and the International Insurance Amendment Act 1998)*

# **International Insurance Act 1988**

*(as amended by the Offshore Legislation Amendment Act 1990, the Offshore Centre Legislation Amendment 1993 and the International Insurance Amendment Act 1998)*

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**AN ACT to provide for the regulation of persons establishing and carrying on off-shore insurance business from within Samoa and for purposes connected therewith.**

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

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*(as amended by the Offshore Legislation Amendment Act 1990, the Offshore Centre Legislation Amendment 1993 and the International Insurance Amendment Act 1998)*

## **PART I**

### **Preliminary**

#### **1. Short title and commencement -**

- (1) This Act may be cited as the International Insurance Act 1988.
- (2) This Act shall come into force on such date as may be specified by the Head of State by Order.

#### **2. Interpretation -**

In this Act, unless the context otherwise requires:-

##### **Actuary -**

"Actuary" means a person who has qualified as an actuary by examination of one of the professional bodies of actuaries for the time being approved by the Registrar and who is a current member in good standing of one of the said bodies, or is a person of good standing with some other actuarial qualification who is recognised by the Registrar as such for the purposes of this Act;  
[Inserted by the International Insurance Amendment Act 1998]

"approved securities" means securities located or effected in Samoa or elsewhere and approved by the Minister for the purposes of section 6(1)(b);

"auditor" means a person who is a member of one of the professional bodies for the time being approved by the Minister and who is a registered company auditor for the purposes of the International Companies Act 1987;

"captive insurance business" means insurance business where the insured is a parent or affiliated company of the registered insurer or is a person in respect of whom the registered insurer is authorised by the Registrar to provide insurance;

"chief executive" means in relation to a registered insurer, an employee of such insurer, who, either alone or jointly with another, is, responsible under the immediate authority of the directors for the conduct of the whole of the insurance business of that insurer;

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"category of business" means long-term business, general business, reinsurance business or captive insurance business as the case may be;

"company" means any body corporate formed or incorporated (other than a domestic company) whether in Samoa or outside Samoa and includes any foreign company (other than an overseas company registered under the Companies Act 1955) but does not include a corporation sole;

"conditions" includes restrictions;

"contract of insurance" includes any contract the effecting of which constitutes the carrying on of insurance business;

"controller" means a person--

- (a) in accordance with whose directions or instructions the directors of a registered insurer are accustomed to act; or
- (b) who either alone or with any associate or associates is entitled to exercise, or control the exercise of, one-third or more of the voting power at any general meeting of a registered insurer;

"Court" means the Supreme Court of Samoa;

"director" means any person (including a company registered under the International Companies Act 1987 and the Trustee Companies Act 1987) occupying the position of director by whatever name called and includes a person in accordance with whose directions or instructions the directors of a company are accustomed to act;

"Dollar" means a unit of the currency of the United States of America and "\$" has the same meaning;

"Domestic business" means insurance business where, whether the contract of insurance is made in Samoa or elsewhere, the subject matter of the contract is either--

- (a) property that at the time of making of the contract is in, or in transit to or from Samoa; or
- (b) the life, safety, fidelity or insurable interest of an individual who at the time of the making of the contract is ordinarily resident in Samoa;

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- (c) a risk of a company formed in Samoa that is not an international company or a foreign company;

"foreign company" means a company registered under Part X of the International Companies Act 1987.

[New definition inserted by the Offshore Legislation Amendment Act 1990]

"general business" means insurance business that is not long term business, reinsurance business or captive business and without limiting the generality of this term includes marine insurance, engineering insurance, aviation insurance, transportation insurance, motor insurance, property liability insurance, pecuniary loss insurance, credit and guarantor insurance and miscellaneous personal insurance"

[New definition inserted by the Offshore Legislation Amendment Act 1990]

"insurance" includes assurance and reinsurance;

"insurance business" means the business of effecting and carrying out contracts--

- (a) protecting persons against loss or liability to loss in respect of risks to which such, persons may be exposed; or
- (b) to pay a sum of money or other thing of value upon the happening of an event,

and includes reinsurance business;

"insurance manager" means a person, not being an employee of an insurer, who--

- (a) provides management services for one or more insurers; or
- (b) holds himself out as a manager in relation to one or more insurers, but does not include the keeping of insurance business accounts for a registered insurer;

"international company" means a company incorporated pursuant to the International Companies Act 1987;

"long-term business" means insurance business of any of the following kinds, namely,--

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- (a) affecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life;
- (b) effecting and carrying out contracts of insurance against risks of the persons insured sustaining injury as the result of an accident, or of an accident of a specified class, or dying as the result of an accident or of an accident of a specified class, becoming incapacitated in consequence of disease, or disease of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either not expressed to be terminable by the insurer before the expiration of five years from the taking effect thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned;
- (c) effecting and carrying out contracts of insurance, whether effected by the issue of policies, bonds or endowment certificates or otherwise, whereby in return for one or more premiums paid to the insurer a sum or a series of sums is to become payable to the persons insured in the future, not being contracts such as to fall within either paragraph (a) or (b); and
- (d) any kind of insurance business declared by regulation to be long-term business;

"long-term business fund" means a fund established pursuant to section 16(2);

"Minister" means the Minister of Finance'

"Off-shore insurance business" means the carrying on or the conducting whether within or outside Samoa of any insurance business where each of the insured, the person to whom the policy moneys are payable and the owner of the policy or any one or more of such persons--

- (a) is not domiciled in Samoa;
- (b) is not ordinarily resident in Samoa;
- (c) is not a company incorporated or registered in Samoa under any legislation other than the International Companies Act 1987; or

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(d) is a trustee company;

"Owner" in relation to a policy; means the person who for the time being has the legal title to the policy and includes an assignee;

"Policy" means--

- (a) any policy or other contract of insurance and any policy, bond, certificate, receipt or other instrument evidencing the contract with the insurer or underwriter or any person named in a policy or other contract of insurance who is liable to pay or contribute towards payment of the sum secured by the policy or contract;
- (b) an instrument evidencing a contract to pay an annuity;
- (c) any policy or other contract in relation to insurance business of any class under which there is for the time being an existing liability already accrued or under which a liability may accrue;

"policy holder" means a person who for the time being is the legal holder of a policy for securing a contract with an insurer, including an assignee and--

- (a) in relation to such long-term business as consists in the granting of annuities upon human life, includes an annuitant; and
- (b) in relation to insurance business of any kind, includes a person to whom, under a policy, a benefit is due or a periodic payment is payable.

"person" includes any body of persons corporate or unincorporate;

"registered insurer" means an insurer registered or formerly registered under section 7 of this Act to carry on off-shore insurance business;

[Amended by the International Insurance Amendment Act 1998]

"registered insurance manager" is a person registered under section 22 of this Act;

"Registrar" means the person appointed pursuant to section 3 of this Act to be the Registrar of International Insurance for the administration of this Act and includes any person appointed to be the Deputy Registrar or an

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Assistant Registrar when exercising any powers under this Act in accordance with the directions of the Registrar;

"regulations" means regulations made under section 41 of this Act;

"reinsurance business" means insurance business where the risk insured by a person is a risk that person has accepted from an insurer;

"related company" has the meaning given by section 4(5) of the International Companies Act 1987;

"statutory fund" means a fund established pursuant to section 16(1);

"solvency margin" shall have the meaning ascribed to it by section 18(1); and

"year" means a calendar year.

## **PART II**

### **Administration of Act**

#### **3. Appointment of Registrar of International Insurance and Deputy Registrar -**

- (1) There shall be appointed by the Minister and publicly notified a Registrar of International Insurance to have the charge and control of the International Insurance Act and to carry out the duties and functions vested in him by or under this or any other Act.
- (2) There shall from time to time also be appointed by the Minister such Deputy Registrars of International Insurance and other officers as are required for the purposes of this Act.
- (3) Anything by this Act appointed or authorised or requested to be done by the Registrar may be done by any such Deputy Registrar and shall be as valid and effectual as if done by the Registrar.

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- (4) All Courts, Judges, and persons acting judicially shall take judicial notice of the seal and also of the signature of the Registrar and of any Deputy Registrar.
- (5) For the purpose of ascertaining whether a registered insurer is complying with the provisions of this Act, the Registrar or any person authorised by him may inspect any book, minute book, register or record required by or under this Act to be kept by the registered insurer.
- (6) A person who, except for the purposes of this Act, or when properly ordered to do so by the Court, makes a record of, divulges or communicates to any other person, any information which he has acquired by reason of such inspection, shall be guilty of an offence against this Act.
- (7) A registered insurer or any official thereof shall, on being required by the Registrar or a person authorised by the Registrar, produce any such book, register or record.
- (8) A registered insurer or any officer thereof shall not obstruct or hinder the Registrar or person so authorised while exercising any of the powers referred to in subsection (5) of this section.
- (9) There shall be paid to the Registrar such fees and penalties as are prescribed.

### **4. Registration of International Insurance Companies -**

No person, shall carry on or transact or hold himself out as carrying on or transacting any off-shore insurance business in or from within Samoa unless that person holds a valid certificate of registration issued under this Part of this Act and any such person who contravenes this section commits an offence against this Act.

#### **4A Use of the Word “Insurance”, etc.**

(1) Except with the approval of the Registrar in writing, no person, other than a registered insurer under this Act or the holder of a valid insurance licence issued under the Insurance Act 1976 shall. --

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- (a) Use or continue to use the words “insurance”, “assurance”, “indemnity”, “guarantee”, “underwriting”, “reinsurance”, “re”, “surety”, “casualty”, or any other word which in the opinion of the Registrar connotes insurance business or any of their derivatives in any other language in the description or title under which such person is carrying on business in or from within Samoa; or
- (b) Make or continue to make any representation in any billhead, printed form, letter, letterhead, circular, paper, notice, advertisement or in any other manner whatsoever that such person is carrying on offshore insurance business in or from within Samoa.

(2) Every person who contravenes this section commits an offence against this Act:

[New section inserted by the International Insurance Amendment Act 1998]

### **5. Application for registration -**

- (1) Applications for registration to carry on an off-shore insurance business shall be made in writing on the prescribed form to the Registrar and accompanied by--
  - (a) a certified copy of the Act, charter, deed of settlement, Memorandum of Association and Articles of Association of the body corporate, or other document or documents by which the body corporate is constituted; and
  - (b) such fee as may be prescribed by regulation; and
  - (c) such evidence as the Registrar may require--
    - (i) To show that the applicant has complied with its obligations under the International Companies Act 1987;
    - (ii) Of the nature and character of the applicant's business;
    - (iii) Of the financial standing of the applicant;
    - (iv) Of the shareholding and management of the applicant; and

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- (v) Of the ultimate beneficial ownership of the stocks or shares of the applicant
  - (d) the address of its registered office in Samoa;
  - (c) such references as the Registrar may require; and
  - (f) such other information as may be required by regulations
- (2) In addition to the documents, information, and evidence which shall accompany an application under subsection (1) of this section, an applicant shall if required to do so by the Registrar, furnish such additional documents, information, or evidence as the Registrar may require.

**6. Refusal of registration -**

- (1) The Registrar shall not register any applicant under section 7 of this Act if the applicant--
- (a) is not an international company or a foreign company; or
  - (b) does not satisfy the Registrar that the amount paid up on its share capital--
    - (i) In a case where the applicant proposes to carry on long-term business but no other category of business, is \$500,000 or more;
    - (ii) In a case where the applicant proposes to carry on general business but no other category of business, is \$500,000 or more;  
[As amended by the Offshore Legislation Amendment Act 1990]
    - (iii) In a case where the applicant proposes to carry on reinsurance business but no other category of business, is \$200,000 or more;
    - (iv) In a case where the applicant proposes to carry on captive insurance business but no other category of business is \$100,000 or more;

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- (v) In a case where the applicant proposes to carry on more than one category of business is the aggregate of the amounts required for each category--  
  
and subject to subsection (2) of this section does not satisfy the Registrar that the minimum amount paid up on its share capital is maintained in approved securities;  
or
  - (c) does not satisfy the Registrar that the controller, directors and chief executive (if any) of the applicant are fit and proper persons to be associated with insurance companies;
  - (d) does not satisfy the Registrar that it has, or has available, adequate knowledge and expertise of the insurance business to be carried on; or
  - (e) does not satisfy the Registrar that it has either--
    - (i) Management in Samoa with adequate knowledge and expertise of the insurance business to be carried on and has at least one director resident in Samoa; or
    - (ii) Appointed a registered insurance manager in Samoa with adequate knowledge and experience of the insurance business to be carried on; or
  - (f) does not comply with the criteria contained in regulations; or
  - (g) it is in the public interest to refuse the registration.
- (2) The requirement to maintain minimum paid up share capital in approved securities shall not apply where the applicant does not propose to carry on any insurance business other than reinsurance business or captive insurance business.

### **7. Registration -**

- (1) In relation to every application for registration the Registrar shall either--

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- (a) issue a certificate of registration to the applicant authorising it to carry on, subject to such terms and conditions as he thinks are appropriate, a category or categories of insurance business; or
  - (b) reject the application; or
  - (c) defer the application and direct that such further enquiries as he considers necessary be made.
- (2)
- (i) Where the Registrar rejects an application he shall notify the applicant in writing of the rejection but he shall not be required to give reasons therefor; and
  - (ii) Where an application is rejected any application fee, less a prescribed administration charge, shall be refunded.
- (3) If any terms and conditions are imposed under subsection (1)(a) of this section, the Registrar may from time to time vary or revoke any of those terms or conditions or impose any additional conditions.

### **8. Renewal of Registration -**

- (1) The first certificate of registration shall be valid for 12 months from the date of registration and shall be renewable thereafter for further periods of 12 months from each anniversary of the date of registration upon due payment of the prescribed annual renewal fee.
- (2) Where application to renew the certificate is not made before the date of expiry, or the annual renewal fee is not paid prior to that date, a renewal certificate may nevertheless be issued, on payment of the prescribed penalties provided that--
- (i) The certificate of registration has not been cancelled or revoked;
  - (ii) A renewal application is made and the annual renewal fee is paid, within one month after the date of expiry of the certificate; and

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- (iii) The Registrar is satisfied that there were good and sufficient reasons as to why an application for renewal or payment of the renewal fee was not made prior to the date of expiry of the certificate.
- (3) Every certificate of registration shall show on its face the date of expiry.
- (4) Any director or officer of a registered insurer who knowingly permits the company to continue to carry on its insurance business after the date of expiry of its certificate of registration and before a current certificate of registration has been issued commits an offence against this Act.

### **9. Cancellation, suspension or imposition of conditions on licence -**

- (1) A certificate of registration may be cancelled or suspended or made subject to conditions by the Registrar at any time for such period as the Registrar deems fit, where there has been any change in the circumstances of the registered insurer (including any change in shareholding, management, or beneficial ownership) which would have caused the Registrar to have refused an application for registration if such changed circumstances had been part of the original application or where the registered insurer--
  - (a) fails to furnish any document, information or evidence which he has been required to furnish; or
  - (b) fails to notify the Registrar of any material changes which have taken place, as required by section 12 of this Act; or
  - (c) has a winding up order made against it; or
  - (d) fails to comply with any term or condition subject to which the certificate of registration was issued; or
  - (e) is in breach of any duty or obligation imposed upon it by this Act or commits an offence under this Act; or

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- (f) ceases to transact off-shore insurance business from within Samoa and requests that certificate of registration be cancelled;
  - (g) conducts its affairs in a manner which is or might be prejudicial to the interests of present or potential policy holders and the general public.
- (2) Where the Registrar intends to suspend or cancel or impose conditions on a licence under subsection (1) of this section he shall give the registered insurer notice of his intention and reasonable opportunity to show cause as to why the licence should not be suspended or cancelled or made subject to conditions.
- (3) Where the Registrar has given notice to the registered insurer of his intention to suspend or cancel or impose conditions on the certificate of registration under subsection (2) of this section the Registrar, after considering any submissions and evidence by the registered insurer may--
- (a) suspend or cancel or impose conditions on the certificate of registration;
  - (b) alter his intention by suspending instead of cancelling the certificate of registration or vice versa; or
  - (c) not proceed with his intention to suspend or cancel or impose conditions on the certificate of registration,
- and he shall give notice to the registered insurer of his decision and such decision shall take effect from such date as is specified by the Registrar in the notice.
- (4) Where the Registrar gives notice to the registered insurer of his decision to suspend or cancel or impose conditions on the certificate of registration under subsection (3) of this section, the registered insurer shall return the certificate of registration to the Registrar forthwith.

### **10. Appeal against cancellation, suspension or imposition of conditions on licence -**

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- (1) Any person who is aggrieved by the cancellation or suspension or imposition of conditions on a licence may, within 14 days of the giving of the notice under section 9(3) of this Act, appeal against the cancellation, suspension or imposition of conditions to a Judge of the Court in Chambers whose decision thereon shall be final.
- (2) Pending the determination of any appeal under subsection (1) of this section, the Judge may at any time and from time to time defer the cancellation, suspension or imposition of conditions which is the subject of the appeal.

### **11. Place of business -**

- (1) A registered insurer shall transact business only from its registered office in Samoa or through the office of a trustee company unless it applies for and receives the prior written permission of the Minister to maintain a permanent establishment in Samoa and the Minister may grant the permission upon such terms and conditions as he thinks fit.
- (2) Unless otherwise approved, the principal place of business of the registered insurer shall be its registered office in Samoa or the address of the trustee company as the case may be.

### **12. Notification of changes-**

- (1) A registered insurer shall within 21 days after the making of an alteration in the Act, charter, deed of settlement, Memorandum of Association, Articles of Association or other document by which it was constituted a body corporate, submit to the Registrar particulars in writing of the alteration certified by a director or the secretary of the registered insurer.  
[Subsection (1) as amended by the Offshore Centre Legislation Amendment Act 1993.]
- (2) A registered insurer shall forthwith notify the Registrar in writing, of any material change in the particulars set out in the application for registration or in the documents, information, or evidence accompanying that application or in any documents, information or evidence, if any, given under section 5 of this Act.

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- (3) "Any person who fails to comply with this section commits an offence against this Act.

[Inserted by the International Insurance Amendment Act 1998]

**PART III**

**Records, Accounts and Long-Term Business**

**13. Keeping of business records -**

- (1) In this section--

"Business records" include accounting, policy and claims records of the registered insurer and such working papers and other documents as are necessary to explain the methods and calculations by which its accounts are made up;

"Accounts" means profit and loss accounts and balance sheets, and includes notes (other than directors' reports) attached to, or intended to be read with, any of those profit and loss accounts or balance sheets.

- (2) A registered insurer shall--

- (a) keep and maintain such business records as correctly record and explain its transactions and financial position;
- (b) keep and maintain its business records in such a manner as will enable true and fair accounts to be prepared from time to time; and
- (c) keep and maintain its business records in such a manner as will enable true and fair accounts to be prepared from time to time; and
- (d) keep and maintain its business records at its principal place of business in Samoa unless otherwise authorised in writing by the Minister.

- (3) Any registered insurer who fails to comply with this section commits an offence against this Act.

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### **14. Annual Accounts -**

- (1) The provisions of the International Companies Act 1987 relating to accounts and auditors except to the extent that they are inconsistent with this Act shall apply to registered insurers.
- (2) In this section, "annual accounts" mean--
  - (a) the revenue or fund account for the year; and
  - (b) the profit and loss account for the year or, in the case of a registered insurer not trading for profit, income and expenditure account for the year; and
  - (c) the balance sheet as at the end of the year in such form (being a form calculated to enable comparisons to be made between the registered insurer's business for the year in respect of which the statements are prepared and the registered insurer's business for the year immediately preceding that year) and shall contain such information, as may be prescribed.
- (3) -
  - (a) a copy of the registered insurer's audited annual accounts shall be submitted to the Registrar within 21 days after the date of the meeting at which the accounts were approved by the board of directors and in any event not later than six months after the close of the financial year to which they relate; and
  - (b) where the audited accounts are submitted later than six months after the close of the financial year to which they relate a penalty to be prescribed shall be payable.
- (4) Such statements, reports, certificates and information as may be required by regulations made under this Act, or required by any other enactment to be annexed or attached to the annual accounts for any purpose shall be produced to the Registrar at the same time as the annual accounts are submitted.
- (5) For the purpose of this section, an audit shall be carried out by a registered company auditor approved for that purpose by the Minister.

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- (6) Any registered insurer who willfully fails to comply with subsections (3) and (4) of this section, commits an offence against this Act.

### **14A. Actuarial Valuation**

- (1) Every registered insurer licensed to carry on long term business shall, in addition to filing audited accounts as required under section 14, prepare and file every two years an actuarial valuation of its assets and liabilities, certified by an approved actuary, so as to enable the Registrar to be satisfied as to its solvency.
- (2) The actuarial valuation shall be submitted to the Registrar not later than six months after the close of the financial year to which it relates.
- (3) "Any person who contravenes this section, commits an offence against the Act".

[New section inserted by the International Insurance Amendment Act 1998]

### **15. Application of other Act -**

Section 117 of the International Companies Act 1987 shall not apply to a registered insurer.

### **16. Statutory and long-term business funds**

- (1) -
- (a) Subject to this section, a registered insurer may establish and maintain one or more statutory funds, under an appropriate name, in respect of such part or parts of the off-shore insurance business carried on by it, as the registered insurer so determines;
- (b) Where a registered insurer has established a statutory fund, it shall determine as soon as practicable thereafter what part or parts of its off-shore insurance business relate to that statutory fund;
- (c) A registered insurer shall not determine that a particular policy or policies issued by it relate to a particular statutory fund unless the owner of the policy or the person who upon the

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issue of the policy will become the owner has consented in writing to the application of this section to the policy;

(d) All amounts received by a registered insurer in respect of any part of its off-shore insurance business in respect of which it has established a statutory fund, shall be carried to and become assets of that fund, including any income arising from investment of the assets of that statutory fund;

(da) the assets of every statutory fund maintained by a registered insurer may be invested (subject to any provisions in the instrument constituting the registered insurer or in the articles of association or other rules of the registered insurer which impose restrictions upon the manner in which the assets of the insurer may be invested) in such manner as the registered insurer thinks fits.

[new subsection inserted by the Offshore Centre Legislation Amendment Act 1993]

(e) For the purposes of paragraph (da) of this section, the whole or any part of the assets of a statutory fund may from time to time be applied or invested by a registered insurer in or towards the payment of any premium or other fee or payment (each of whatsoever nature) payable in order to effect or maintain, or in respect of effecting or maintaining, reinsurance in respect of that statutory fund.

[as amended by the Offshore Centre Legislation Amendment Act 1993.]

(2) -

(a) Where a registered insurer transacts or carries on long term insurance business, the insurer shall establish a statutory fund to be known as the long-term business fund into an appropriately named sub-fund of which, all receipts in respect of each subclass of such business shall be paid;

(b) No transfer of assets from a long-term business fund other than a transfer in accordance with subsection (3)(c) shall be effected without--

(i) The authority of a resolution of the directors of the registered insurer; and

(ii) The written consent of the actuary to the registered insurer;

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- (c) No registered insurer transacting or carrying on long-term business shall declare or pay a dividend to any person other than a policy-holder unless--
  - (i) At a date within the year immediately preceding the declaration of the dividend, the value of the assets in its long-term business fund as certified by the actuary to the registered insurer, exceeds the extent (as so certified) of the liabilities of the registered insurer's long-term business; and
  - (ii) The amount of such dividend shall not be such as to cause the margin of solvency of the registered insurer to fall below the amount required under section 18;
  
- (3) --
  - (a) Every registered insurer which has established any statutory fund or a long-term business fund in respect of any part of its off-shore business shall--
    - (i) Keep its business accounts in respect of such insurance business separate from any business accounts kept in respect of any other insurance business;
    - (ii) Maintain books of account and other records in such a manner that the assets of any statutory or long-term business fund established pursuant to this section and the liabilities referable to the off-shore insurance business to which any statutory or long-term business fund relates, can be readily identified at any time;
  - (b) The assets of statutory or long-term business fund shall not be available to meet any liabilities or expenses of the registered insurer other than the liabilities or expenses referable to that part or part of the insurance business to which the statutory or long-term business fund relates;
  - (c) The restriction imposed by paragraph (b) of subsection (3) of this section shall not apply to so much of those assets as are certified by the actuary to the insurer to exceed the extent (as

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certified) of the liabilities of the registered insurer's long-term business;

(d) A registered insurer shall not mortgage or charge any assets of any statutory or long-term business fund other than with the consent of all owners of policies issued in respect of the insurance business to which that statutory or long-term business fund relates;

(e) The assets of a statutory or long-term business fund shall be kept distinct and separate from all other assets of the registered insurer; and

(f) Where a registered insurer has established a statutory or long-term business fund in accordance with this section--

(i) No assets of the registered insurer other than these comprising and constituting the statutory or long-term business fund shall be available to meet any liabilities or expenses (each of whatsoever nature) in any way referable to the insurance business to which the statutory or long-term business fund relates; and

[as amended by the International Insurance Amendment Act 1998]

(ii) No proceedings of any nature whatsoever seeking to recover from such registered insurer any assets or amount other than the statutory or long-term business fund or value thereof shall be taken in any way against or in respect of such registered insurer in any Court and no judgement of any Court shall issue against any such registered insurer or be enforced in Samoa against such registered insurer for any moneys or assets other than those of the statutory or long-term business fund.

(4) Any registered insurer who contravenes the provisions of this section commits an offence against this Act.

**17. Transfer of long-term business -**

(1) Where it is proposed to carry out a scheme under which the whole or part of the long-term business carried on by a registered insurer ("the

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transferor") is to be transferred to another registered insurer ("the transferee") the transferor or transferee may apply to the Court by petition, for an Order sanctioning the scheme.

- (2) The Court shall not determine an application under this section unless the petition is accompanied by a report on the terms of the scheme by an independent actuary (not being an employee of, nor actuary to, either registered insurer) and the Court is satisfied that the requirements of subsection (3) of this section have been complied with or that in the circumstances compliance is unnecessary.
- (3) The requirements referred to in subsection (2) of this section are--
  - (a) that a notice has been published in such two newspapers circulating in Samoa as the Registrar shall approve stating that the application has been made and giving the address of the offices at which, and the period for which, copies of the documents mentioned in subparagraph (d) of this subsection will be available as required by that paragraph;
  - (b) except where the Court has otherwise directed, that the statement--
    - (i) Setting out the terms of the scheme; and
    - (ii) Containing a summary of the report mentioned in subsection (2) sufficient to indicate the opinion of the actuary on the likely effects of the scheme on the long-term policy holders of the registered insurers concerned, has been sent to each of those policy holders and to every member of those registered insurers;
  - (c) that a copy of the petition and of the report mentioned in subsection (2) of this section and of any statement sent out under paragraph (b) of this subsection has been served on the Registrar and that a period of not less than three weeks has elapsed since the date of such service; and
  - (d) that copies of the petition and of the report mentioned in subsection (2) of this section have been open to inspection at the office in Samoa of the registered insurers concerned or

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their representatives for a period of not less than 3 weeks beginning with the date of the publication of a notice in accordance with paragraph (a) of this subsection.

- (4) Each of the registered insurers concerned shall furnish a copy of the petition and of the report mentioned in subsection (2) of this section to any person who asks for one at any time before an Order sanctioning the scheme is made on the petition.
- (5) On any petition under this section--
  - (a) the Registrar; and
  - (b) any person (including any employee of the transferor or the transferee) who alleges that he would be adversely affected by the carrying out of the scheme, shall be entitled to be heard.
- (6) The Court shall not make an Order sanctioning the scheme unless it is satisfied that the transferee is, or, immediately after the making of the Order will be, authorised to carry on any long-term business to be transferred under the scheme.
- (7) No such transfer as is mentioned in subsection (1) of this section shall be carried out unless the scheme relating to the transfer has been sanctioned by the Court in accordance with this section and no Order shall be made under the International Companies Act 1987 in respect of so much of any compromise or arrangement as involves any such transfer.
- (8) Where the Court makes an Order under this section sanctioning a scheme the Court may, either by that Order or by any subsequent Order, make provision for all or any of the following matters:--
  - (a) the transfer to the transferee of the whole or any part of the undertaking and of the property or liabilities of the transferor;
  - (b) the allotting or appropriation by the transferee of any shares, debentures, policies or other like interests in the transferee which under the scheme are to be allotted or appropriated by the transferee to or for any person;

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- (c) the continuation by or against the transferee of any legal proceedings pending by or against the transferor;
  - (d) the dissolution, without winding up, of the transferor;
  - (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.
- (9) Where any such Order provides for the transfer of property or liabilities that property shall, by virtue of the Order, be transferred to and vest in, and those liabilities shall, by virtue of the Order, be transferred to and become the liabilities of the transferee, and, in the case of any property, if the Order so directs, free from any mortgage or charge which is by virtue of the scheme to cease to have effect.
- (10) For the purposes of any provision requiring the delivery of an instrument as a condition for the registration of the transfer of any property, an Order which by virtue of this section operates to transfer any property shall be treated as an instrument of transfer.
- (11) Where a scheme is sanctioned by an Order of the Court under this section the transferee shall, within 10 days from the date on which the order is made, or such longer period as the Registrar may allow, deposit 2 certified copies of the Order with the Registrar.
- (12) Any person who fails to comply with subsections (4) or (11) of this section commits an offence against this Act.
- (13) In this section "property" includes property, rights and powers of every description, "liabilities" include duties, and "shares" and "debenture" have the same meaning as in the International Companies Act 1987.

### **18. Solvency margins -**

- (1) Subject to subsection (7) of this section every registered insurer shall ensure that the value of its assets exceeds the amount of its liabilities ("the margin of solvency") by such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section.

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- (2) If the solvency margin of a registered insurer falls below such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section, the registered insurer shall at the request of the Registrar submit to him a short-term financial scheme within thirty days of the request, or such longer periods as the Registrar may permit, and shall if the Registrar considers the scheme (or the scheme as previously modified) inadequate, propose modifications to it.
- (3) Where a registered insurer is required to maintain separate solvency margins in respect of long-term and general business, subsection (2) of this section shall have effect as if any reference to the solvency margin of the registered insurer is a reference to the aggregate of those margins.
- (4) A scheme submitted under subsection (2) of this section may include proposals for--
  - (a) the appointment of a special manager acceptable to the Registrar; and
  - (b) the discontinuance, either in whole or in part, of the registered insurer's business.
- (5) A registered insurer shall give effect to any scheme accepted by the Registrar.
- (6) If a registered insurer is unable or fails to submit a scheme which is acceptable to the Registrar, the registered insurer shall be deemed for the purposes of section 159 of the International Companies Act 1987, to be unable to pay its debts.
- (7) This section shall not apply to a registered insurer who carries on only reinsurance business or captive insurance business.

**19. Solvency margin for reinsurer and captive insurer --**

Every registered insurer who carries on only reinsurance business or captive insurance business shall --

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- (a) have such surplus of tangible assets or other assets as may be approved by the Registrar over liabilities as may from time to time be prescribed by regulation; and
- (b) demonstrate if required by the Registrar in writing to the satisfaction of the Registrar its financial stability.  
[section 19 as amended by the Offshore Centre Legislation Amendment Act 1993.]

**PART IV**

**Regulation of Registered Insurers**

**20. Restriction of Business -**

- (1) A registered insurer shall not carry on any activities, in Samoa or elsewhere, otherwise than in connection with or for the purpose of its off-shore insurance business.
- (2) Subject to the provisions of section 20(1) of this Act a registered insurer shall not carry on business other than off-shore insurance business.
- (3) A registered insurer who is authorised to carry on only captive insurance business shall not accept business from or insure any person who is not a parent or affiliated company of the registered insurer unless the insured is a person in respect of whom the registered insurer is authorised by the Registrar to provide insurance.
- (4) Reinsurance--
  - (a) Subject to paragraph (b) of this subsection a registered insurer may effect reinsurance in respect of any off-shore insurance business undertaken by it and may assign to the owner of a policy the rights of the registered insurer against the reinsurer in respect of any particular policy. In the event of such an assignment being effected the owner of the policy shall continue to the extent that the risks covered by the policy issued by the registered insurer have not been so reinsured;

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- (b) An assignment pursuant to paragraph (a) of this subsection shall be valid only if the owner of the policy has consented in writing to this section applying or if the person who will become the owner of a policy upon its issue has so consented prior to the issue of the policy; and
  - (c) Nothing in this subsection shall restrict the ability of a registered insurer to effect reinsurance without an assignment pursuant to paragraph (a) of this subsection.
- (5) A registered insurer shall not use or operate under a name which--
- (a) so closely resembles or is identical to the name of any company, firm or business house whether within Samoa or not, as is likely to mislead or deceive:
  - (b) is calculated to falsely suggest the patronage of or connection with some person or authority whether within Samoa or not;
  - (c) is calculated to falsely suggest that such registered insurer has a special status in relation to or derived from the Government of Samoa, or has the official backing of or acts on behalf of the said Government or of any department of official thereof or is recognised in Samoa as a national insurer.  
[New subsection inserted by the International Insurance Amendment Act 1998]
- (6) Any person who contravenes this section commits an offence against this Act".  
[New subsection inserted by the International Insurance Amendment Act 1998]

**20 A Shares not to be Issued or Transferred Without Approval**

- (1) No shares in or other securities whatsoever of a registered insurer shall be issued and no issued shares or beneficial interests in shares or other securities of any registered insurer shall be transferred or disposed of in any manner without the prior written approval of the Registrar:

Provided that the Registrar may exempt any registered insurer from the provisions of this section subject to such terms and conditions if any as he may deem necessary.

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(2) In subsection (1) the reference to shares of any registered insurer being transferred or disposed of includes any transfer or disposition that would result in any change in beneficial ownership of the registered insurer.

(3) Notwithstanding the provisions of subsection (1), the prior written approval of the Registrar shall not be required where shares or other securities are issued to existing shareholders on a pro rata basis.

(4) No bearer shares or share warrants to bearer may be issued by a registered insurer.”

[New section inserted by the International Insurance Amendment Act 1998]

### **21. Advertising -**

(1) No advertising shall be used by a registered insurer which is likely to mislead, or deceive prospective policy holders with respect to the registered insurer's assets, corporate structure, financial standing, age or relative position in the insurance business or in any other material respect.

(2) Any person who contravenes this section commits an offence against this Act.

### **22. Insurance Managers -**

(1) No person shall act as an insurance manager for, or in relation to, a registered insurer, unless that person--

(a) is registered in a register to be kept by the Registrar in accordance with regulations and has paid to the Registrar the prescribed registration fee and every prescribed annual renewal fee.

[As amended by the Offshore Legislation Amendment Act 1990]

(b) is exempted from registration by such regulations and is either an international company or a foreign company.

(2) An applicant for registration shall provide such documents and information as may be required by the Registrar including, without limiting the generality of the foregoing, such documents and information as the Registrar may require to satisfy himself that the applicant is a fit and proper person and has or has available adequate

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knowledge and expertise so as to provide satisfactory insurance management services in Samoa.

- (3) Sections 23, 24, 25 and 32 of this Act shall apply, with the necessary modification in relation to any person acting as an insurance manager as they apply to a registered insurer.
- (4) The Registrar may if he thinks it proper to do so--
  - (a) refuse to register any application for registration; and
  - (b) cancel registration at any time.
- (5) Where a person carries on a business which in any respect is or in the opinion of the Registrar appears to be, of a similar character to the business carried on by an insurance manager, that person upon a declaration made by the Registrar in writing shall be subject to the provisions of this section and shall be deemed to be acting as an insurance manager.
- (6) Any person who--
  - (a) contravenes subsection (1) of this section or willfully
    - (i) Takes or uses any style, title or description which consists of or includes the expression "insurance manager" when he is not registered; or
    - (ii) Takes or uses any style, title or description falsely implying or otherwise pretends, that he is registered, commits an offence against this Act.

**23. Management -**

- (1) Subject to subsection (2) of this section every registered insurer shall have--
  - (a) management in Samoa; or
  - (b) appoint a registered insurance manager in Samoa with adequate knowledge and experience of the insurance business carried on.

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- (2) A registered insurer who is authorised to carry on only captive insurance business shall appoint a registered insurance manager in Samoa with adequate knowledge and experience of the insurance business carried on or to be carried on, unless it is authorised by the Minister to maintain a permanent establishment pursuant to section 11(1) of this Act.

### **24. Power to obtain information -**

- (1) The Registrar may require a registered insurer to provide him, at specified times or intervals, with information about specified matters relating to the insurer being, if he so requires, information verified in a specified manner or provided in a specified form.
- (2) Where by virtue of subsection (1) the Registrar has required a registered insurer to provide information about specified matters and the registered insurer has failed to provide that information, the Registrar may require the registered insurer's actuary, auditor, insurance manager or banker to provide such information about those matters as is within their knowledge.
- (3) The Registrar may require a registered insurer to produce, at such time and place as he may specify, such documents or information as he may specify.
- (4) Where by virtue of subsection (3) the Registrar has power to require the production of any document from any registered insurer, the Registrar shall have the like power to require the production of that document from any person who appears to him to be in possession of it; but where any person from whom such production is required claims a lien on any document produced by him, the production shall be without prejudice to the lien.
- (5) Any power conferred by virtue of subsections (3) or (4) to require a registered insurer or other person to produce any document or information shall include a power to take copies of it or extracts from it.
- (6) In this section and in section 25, references to the Registrar shall include any person appointed in writing by the Minister to carry out the duties of the Registrar.

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- (7) Any person who fails to supply information or to produce any document when required to do so by the Registrar in accordance with this section, commits an offence against this Act.
- (8) The powers conferred by this section and section 25 may be exercised in relation to a registered insurer has ceased to have any liability in respect of any contract of insurance which was entered into at a time when it was registered.

### **25. Inspection and investigation -**

- (1) The Minister may appoint any qualified person as an Inspector to investigate the affairs or any part of the affairs of a registered insurer and to inspect the registered insurer's business and accounting records and accounts and such other records as may have been kept by the registered insurer in the course of its off-shore insurance business, if he has reason to believe that the registered insurer is carrying on its business in a manner prejudicial to the interest of its policy holders or of persons who may become policy holders or that it may have insufficient assets to cover its liabilities and claims by policy holders, or either in Samoa or elsewhere it may be contravening any of the provisions of this Act.
- (2) It shall be the duty of the registered insurer under investigation and of all past and present officers of the registered insurer and of any related company which has been involved in the off-shore insurance business transactions of the registered insurer, to produce to the Inspector all books, records and documents relating to the registered insurer or related company under investigation which are in their custody or control and other wise to give the Inspector all assistance in connection with the investigation which they are reasonably able to give.
- (3) The Inspector shall have every such power of entry and access as may be necessary for the purposes of this section, and he may take possession of all such books, accounts and documents as, and for so long as, may be necessary for the purposes of his inspection and investigation.

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- (4) The Inspector shall exercise his right of entry and access under subsection (3) during the normal office hours of the registered insurer, unless otherwise authorised by the Court.
- (5) The Inspector may take copies of all books, accounts and documents of the registered insurer in his possession for the purposes of his inspection and investigation under this section.
- (6) The Minister, may if he thinks fit, order the registered insurer or any related company whose officers are investigated under the provisions of this section to pay all or any of the expenses properly incurred in connection with the investigation or in connection with the proceedings instituted as a result of the investigation.
- (7) Any person who --
  - (a) wilfully obstructs the Inspector acting in the execution of his powers under this section;
  - (b) refuses or fails or neglects to produce any books, accounts, documents or information required under this section; or
  - (c) knowingly produces or causes or permits to be produced any book, account, document or information required under this section which he knows to be false in a material particular;commits an offence against this Act.
- (8) The Inspector shall have the same powers in respect of the supply of information and production of documents as are given to the Registrar under section 24.

**26. Preservation of Secrecy --**

“(1) Except for the purpose of the performance or exercise of his duties or functions under this Act or when lawfully required to do so by any court of competent jurisdiction within Samoa neither the Minister, the Registrar nor any officials or officers thereof shall disclose any information relating to any application by any person under the provisions of this Act or to the affairs of a registered insurer or of any policy holder of a registered insurer which he has

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acquired in the performance or exercise of such duties or functions under this Act.

- (2) Subsection (1) shall not apply to a disclosure by the Registrar-
  - (a) necessary for the effective regulation of a registered insurer;
  - (b) in respect of the affairs of the registered insurer or a policy holder of a registered insurer with the authority of the registered insurer or the policyholder of the registered insurer which has been voluntarily given, as the case may be.
  - (c) where the information is already in the public domain.
- (3) The Registrar may disclose to a foreign insurance supervisory authority or any other like regulatory authority information about the registered insurer, provided that:
  - (a) the Registrar has satisfied himself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking on confidentiality;
  - (b) the information provided by the Registrar does not contain any names of individual policy holders of the registered insurer concerned; and
  - (c) the information is required for the purposes of insurance supervision only and is not related directly or indirectly to the imposition, calculation and collection of taxes or the enforcement of exchange control regulations."

[As amended by the International Insurance Amendment Act 1998]

### **27. Winding-up of registered insurer -**

- (1) The provisions of Part IX of the International Companies Act 1987 shall apply with respect to the winding up of a registered insurer registered under this Act, so far as they are applicable, subject to the provisions of this section and sections 28, 29 and 30 of this Act.
- (2) A petition for the winding up of a registered insurer shall not be presented, other than by the Registrar except by leave of the Court.

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**28. Winding-up on petition of Registrar -**

- (1) The Registrar may present a petition for the winding up of a registered insurer or its business within Samoa on any ground provided by and in accordance with the provisions of the International Companies Act 1987, and on the grounds--
  - (a) that the registered insurer has failed to satisfy an obligation to which it is or was subject by virtue of this Act;
  - (b) that the registered insurer being under an obligation imposed by the International Companies Act 1987 or this Act with respect to the keeping of business and accounting records, has failed to satisfy that obligation or to produce records kept in satisfaction of that obligation and the Registrar is unable to ascertain its financial position.
- (2) In any proceedings on a petition to wind up a registered insurer presented by the Registrar under subsection (1) of this section evidence that such registered insurer was insolvent at the close of the period to which the annual accounts of the registered insurer last submitted under section 14 of this Act relate shall be evidence that the registered insurer continues to be unable to pay its debts, unless the contrary is proved.

**29. Winding-up of insurer with long-term business -**

- (1) No registered insurer which carries on long-term business shall be wound up voluntarily.
- (2) Subject to subsection (3) of this section in any winding up--
  - (a) the assets in a registered insurer's long-term business fund or funds shall be available only for meeting the liabilities and expenses of the registered insurer attributable to such long-term business for which the particular fund or funds were created;

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- (b) the other assets of the registered insurer shall be available only for meeting the liabilities and expenses of the registered insurer attributable to its other business.
- (3) Where the value of the assets mentioned in either of the paragraphs of subsection (2) of this section exceeds the amount of the liabilities and expenses mentioned in that paragraph, the restriction imposed by that subsection shall not apply to so much of those assets as represents the excess.
- (4) Where under the International Companies Act 1987 any money or property is ordered to be repaid or restored to a registered insurer or any sum is ordered to be contributed to its assets then, if, and in so far as the wrongful act which is the reason for the making of the order relates to assets representing a fund or funds maintained by the registered insurer in respect of its long-term business, the Court shall include in the Order a direction that the money, property or contribution shall be treated for the purposes of this Act as assets of that fund or funds and this Act shall have effect accordingly.

### **30. Continuation of long-term business insurers in liquidation -**

- (1) This section has effect in relation to the winding up of a registered insurer carrying on long-term business.
- (2) The Liquidator shall, unless the Court otherwise orders, carry on the long-term business of the registered insurer with a view to its being transferred as a going concern to another international company or foreign company and, in carrying on that business as aforesaid, the Liquidator may agree to the variation of any contracts of insurance in existence at the commencement or the winding up but shall not effect any new contracts of insurance.
- (3) If the Liquidator is satisfied that the interests of the creditors in respect of liabilities of the registered insurer attributable to its long-term business require the appointment of a special manager of the registered insurer's long-term business, he may apply to the court, and the Court may on such application appoint a special manager of this business to act during such time as the Court may direct, with such power as may be granted to him by the Court.

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- (4) A special manager appointed under subsection (3) shall--
  - (a) give such security and account in such manner as the Court may direct; and
  - (b) receive such remuneration as may be fixed by the Court.
- (5) The Court may, if it thinks fit and subject to such conditions (if any) as it may determine, reduce the amount of the contracts made by the registered insurer in the course of carrying on its long-term business.
- (6) The Court may, on the application of the Liquidator, or a special manager appointed under subsection (3) of this section or the Registrar, appoint an independent actuary to investigate the long-term business of such company and to report to the Liquidator, the special manager or the Registrar as the case may be, on the desirability or otherwise of that business being continued and on any reduction in the contracts made in the course of carrying on that business that may be necessary for its successful continuation.

**31. Reduction of contracts as alternative to winding up -**

In the case of an insurance company which has been proved to be unable to pay its debts, the Court may, if it thinks fit, reduce the amount of the contracts of the company on such terms and subject to such conditions as the Court thinks just, in place of making a winding up order.

**32. Breaches of professional secrecy -**

(1) Except as provided in section 25 every person commits an offence against this Act who--

[Amended by the International Insurance Amendment Act 1998]

- (a) divulges any information, in Samoa or elsewhere, in relation to--
  - (i) Any off-shore insurance business in Samoa;

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- (ii) The transfer of moneys and property into or out of Samoa in the course of any off-shore insurance business; or
  - (iii) Any insurance policy issued by a registered insurer or the fact of any person having, or having had, such a policy, of which he has become aware in his capacity as an officer, employee or authorised agent of a registered insurer, or as an officer or employee of an auditing company; or
- (b) attempts to induce others to breach professional secrecy in relation to any such matters.
- (2) An offence under subsection (1) of this section may be committed either during or after the termination of, the official or employment relationship or of the agency or the practice of the profession.
- (3) Notwithstanding subsection (1) of this section, it shall not be an offence under this section to divulge such information--
  - (a) to an Inspector appointed pursuant to section 25 of this Act or to the Registrar pursuant to section 24 of this Act;
  - (b) to the person on whose behalf the off-shore insurance business is being carried out;
  - (c) in Samoa, to an officer or employee of the same registered insurer in the performance of his duties as such officer or employee;
  - (d) to an officer or employee of an insurance company or other such financial institution outside Samoa, if all the persons concerned in the off-shore insurance business or in whose name the policy stands, consent in writing to his doing so;
  - (e) to an officer or employee of the registered insurer outside Samoa so long as the names of the persons concerned in the off-shore insurance business and any information which might identify them and the names in which policies stand are not divulged; and

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*(as amended by the Offshore Legislation Amendment Act 1990, the Offshore Centre Legislation Amendment 1993 and the International Insurance Amendment Act 1998)*

- (f) to an officer or employee of a trustee company at whose office the registered insurer is transacting business pursuant to section 11 of this Act.
  - (g) to the Registrar by the auditor or former auditor or by the actuary or former actuary of a registered insurer with respect to its audited accounts or actuarial valuations.”  
[New subsection inserted by the International Insurance Amendment Act 1998]
- (4) For the purposes of subsection (3)(d) all the persons concerned in off-shore insurance business and in whose names policies stand shall be deemed to have consented to an officer or employee of a registered insurer divulging to an officer or employee of an insurance institution outside Samoa such information of the off-shore insurance business being carried out as is essential to the carrying out of that insurance business but the consent deemed to be given pursuant to this subsection shall not apply to any particulars which are not so essential to the carrying out of that insurance business.
- (5) Nothing in this section shall prevent the Court from requiring any person to produce documents or to give evidence in any proceedings in the Court of any facts relevant in such proceedings.

**33. Responsibility of employer for breach of security -**

- (1) For the purposes of section 32 of this Act, an offence by an officer or employee of a registered insurer or of an auditing company, as the case may be or by a person after termination of his employment as an officer or employee of a registered insurer or of an auditing company, as the case may be, whether such offence occurs in Samoa or elsewhere, shall be deemed also to be an offence by that registered insurer or by that auditing company.
- (2) Notwithstanding subsection (1) of this section an offence under section 32 of this Act by a person after termination of the official or employment relationship, or of the practice of the profession with a registered insurer or an auditing company, shall not be deemed to be an offence by the registered insurer or by the auditing company, where the registered insurer or auditing company, as the case may be, can demonstrate, on the balance of probabilities, that it has taken all reasonable steps to prevent an offence by the person.

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*(as amended by the Offshore Legislation Amendment Act 1990, the Offshore Centre Legislation Amendment 1993 and the International Insurance Amendment Act 1998)*

**PART V**

**Taxation and Exemptions**

**34. Profits and dividends -**

Notwithstanding anything contained in any other enactment--

- (a) no income tax, nor any other direct or indirect tax or impost, shall be levied in Samoa upon the transactions, contracts, securities or other dealings or upon profits or gains of a registered insurer, or upon any premiums earned by a registered insurer, or money paid to an insured by registered insurer, in respect of any off-shore insurance business written in or from within Samoa; and
- (b) no income tax, nor any other direct or indirect tax or impost, shall be levied in Samoa in respect of any dividends or earnings attributable to the shares or securities of a registered insurer, or upon any premiums paid to a registered insurer or money paid to an insured by a registered insurer.

[as amended by the Offshore Centre Legislation Amendment Act 1993.]

**35. Exemption from stamp duty -**

Contracts of insurance executed for or in connection with the off-shore insurance business of a registered insurer under this Act shall be exempt from stamp duty.

**36. Exemption from currency and exchange control -**

- (1) Any off-shore insurance business conducted by a registered insurer in accordance with this Act shall be exempt from any currency and exchange control restrictions or regulations.

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*(as amended by the Offshore Legislation Amendment Act 1990, the Offshore Centre Legislation Amendment 1993 and the International Insurance Amendment Act 1998)*

- (2) No foreign exchange levy shall be imposed or be payable in respect of any off-shore insurance business conducted by a registered insurer in accordance with this Act.

### **37. Power of exemption -**

- (1) The Minister may of his own motion or pursuant to an application in writing from a registered insurer exempt such registered insurer from all or any part of the provisions of this Act or any regulations made under his Act and may impose such terms and conditions as he thinks fit as a condition under which such exemption is granted. An exemption granted under this subsection may be revoked or the terms and conditions changed by the Minister at any time.
- (2) In dealing with an application the Minister shall not be required to act judicially and his decision in all cases shall be final.

## **PART VI**

### **Supplementary**

### **38. Indemnity -**

The Minister, and the Registrar shall not, nor shall any member, officer or person acting pursuant to any authority conferred by the Minister, or the Registrar, as the case may be, be liable to any action, suit or proceeding for, or in respect of, any act or matter done or omitted to be done in good faith in the exercise, or purported exercise, of the functions conferred by or under this Act or any regulations made thereunder.

### **39. False statements -**

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*(as amended by the Offshore Legislation Amendment Act 1990, the Offshore Centre Legislation Amendment 1993 and the International Insurance Amendment Act 1998)*

Any person who--

- (a) causes or permits to be included in any book or document provided or produced to the Minister, the Registrar or to an Inspector appointed under the provisions of section 25 of this Act a statement which he knows to be false in a material particular; or
- (b) in purported compliance with any provision of this Act or a requirement imposed under any such provisions, provides information which he knows to be false in material particular or recklessly provided information which is false in a material particular, commits an offence against this Act.

### **40. General penalty provisions -**

- (1) Any person who commits an offence against the provisions, or any part of the provisions of any one of sections 12, 13, 21, 22, 24 and 33 shall be liable on conviction if the offender is an individual to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 12 months or to both such, fine and imprisonment in respect of each such offence and if the offender is not an individual to a fine not exceeding \$20,000.  
[Amended by the International Insurance Amendment Act 1998]
- (2) Any person who commits an offence against the provisions, or any part of the provisions or any one of sections 3, 4, 4A, 8, 20 25, 32 and 39 shall be liable, if the offender is an individual, to a fine not exceeding \$30,000 or to a term of imprisonment not exceeding 2 years or to both such fine and imprisonment in respect of each such offence and if the offender is not an individual to a fine not exceeding \$50,000.  
[Amended by the International Insurance Amendment Act 1998]
- (3) Any person who contravenes or fails or neglects to comply with any provisions of this Act or regulations made thereunder, commits an offence against this Act or regulations made thereunder, commits an offence against this Act and shall be liable, on conviction, in a case where for which no specific penalty is otherwise provided in this Act, if the offender is an individual, to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 6 months or to both such fine and

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*(as amended by the Offshore Legislation Amendment Act 1990, the Offshore Centre Legislation Amendment 1993 and the International Insurance Amendment Act 1998)*

imprisonment, or if the offender is not an individual to a fine not exceeding \$10,000.

- (4) Where any person is convicted of an offence under this Act and such offence is a continuing one the offender shall be liable in addition to the penalty otherwise provided for in this Act to an additional fine not exceeding \$500 for everyday on which the offence has continued.
- (5) Where any offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, chief executive, manager, secretary or other similar officer or servant of the body corporate, shall be deemed to have committed an offence against this Act and liable to be proceeded against and punished accordingly.
- (6) No person shall be prosecuted for an offence under this Act without the consent of the Attorney-General.

### **41. Regulations -**

- (1) The Head of State, acting on the advice of Cabinet, may from time to time make such regulations as may be deemed necessary or expedient for the purpose of giving full effect to the provisions of this Act and for the due administration thereof.
- (2) Without limiting the general powers conferred by subsection (1) of this section it is hereby declared that any regulations may be made under this section for all or any of the following purposes:--
  - (a) provisions prohibiting or restricting the issue or transfer of any share in a registered insurer or any interest in such a share, to any specified person or class of persons;
  - (b) provisions restricting a registered insurer and any related company from entering into transactions of any specified description with any person of any specified class or description;
  - (c) (i) The preparation, form and content of the annual accounts of a registered insurer;

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*(as amended by the Offshore Legislation Amendment Act 1990, the Offshore Centre Legislation Amendment 1993 and the International Insurance Amendment Act 1998)*

- (ii) The preparation, form and content of statements, reports and information to be annexed to annual accounts;
  - (iii) The modification of the International Companies Act 1987 in its application to registered insurers; and
  - (iv) Provisions restricting the appointment of auditors to persons who have effected indemnity insurance of such type and amount as may be specified;
- (d) the determination of the level and amount of assets and liabilities for the purposes of the calculations of margins of solvency under this Act and regulations made in exercise of this power may provide that, for any specified purpose, assets or liabilities of any specified category or description shall be left out of account or shall be taken into account only to a specified extent;
- (e) the fixing of penalties for the contravention of any provisions of or regulations made under this Act; and
- (f) purposes connected with any of the matters specified in paragraphs (a) to (c).

### **42. Procedure where none laid down -**

In the event that any act or step is required or permitted to be done under this Act, and no form is prescribed or procedure laid down in this Act or regulations for doing the same the Registrar may, in response to an application to him, or on his own motion give directions as to the manner in which the same may be done and any act or step done or taken in accordance with his directions shall be a valid performance of such act or step.

[as amended by the Offshore Centre Legislation Amendment Act 1993.]

### **42A. English the authentic text -**

**International Insurance Act 1988**

*(as amended by the Offshore Legislation Amendment Act 1990, the Offshore Centre Legislation Amendment 1993 and the International Insurance Amendment Act 1998)*

- (1) Every document filed with the Registrar, and all records and accounts required to be kept under this Act shall be in the English language.
- (2) Where a document is not in the English language it shall be accompanied by an authentic English translation; and in the event of any conflict in meaning between the foreign language and the English version, the English version shall prevail.  
[new section inserted by the Offshore Centre Legislation Amendment Act 1993]

**43. Financial provisions -**

- (1) All fees charges and penalties payable under this Act and --
  - (a) the International Companies Act 1987;
  - (b) the Off-Shore Banking Act 1987;
  - (c) the International Trusts Act 1987; or any successor legislation;
  - (d) the Trustee Companies Act 1987, and
  - (e) the International Partnership and Limited Partnership Act 1997

shall be paid into a Public Account to be known as the Off-Shore Administration Account.

[As amended by the International Insurance Amendment Act 1998]

- (2) All expenses incurred by the Minister or the Inspector of Offshore Banks or any Registrar under any of the Acts referred to in subsection (1) hereof shall be paid from the Off-Shore Administration Account: Provided that if there are insufficient moneys in that account to meet the expenses referred to herein then the deficit shall be funded by appropriation in accordance with section 94 of the Constitution.  
[As amended by the International Insurance Amendment Act 1998]
- (3) Expenditure charged against the Off-Shore Administration Account is declared for the purposes of section 94(4) of the Constitution to be statutory expenditure.
- (4) The administration of the Off-Shore Administration Account shall be conducted in accordance with regulations to be made under this Act.

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*(as amended by the Offshore Legislation Amendment Act 1990, the Offshore Centre Legislation Amendment 1993 and the International Insurance Amendment Act 1998)*

- (5) The Minister may at any time and from time to time direct that all or any moneys held in the Off-Shore Administration Account be paid into the Treasury Fund.
- (6) The Acts referred to in paragraph (a), (b), (c) (d) and (e) of subsection (1) of this section shall be read as if this section formed part of each of the said Acts.
- (7) Section 10(1) of the Off-Shore Banking Act 1987 is consequentially repealed.  
[Amended by the International Insurance Amendment Act 1998]

#### **44. Insurance Act 1976**

Nothing in the provisions of the Insurance Act 1976 shall apply to an international insurance company registered under this Act.

[New section inserted by the International Insurance Amendment Act 1998]