



THE GCSL GROUP OF COMPANIES LIMITED

## Guide to Samoa Companies and Trusts

### INTRODUCTION

Samoa is an independent sovereign state located in the Central South Pacific, north-east of New Zealand and south-west of Hawaii. Until 1997, it was referred to as Western Samoa. The legal system is based on British common law and closely reflects that of New Zealand and other common law jurisdictions. Samoa has strong diplomatic ties with both Australia and New Zealand. The written Constitution provides for a three-tier legal system consisting of a Court of Appeal, High Court and Subordinate Courts.

In 1987, Samoa enacted the Trustee Companies Act to provide for licensing and regulation of trustee companies. With this legislation came the International Companies Act 1987, the International Trusts Act 1987, the Offshore Banking Act 1987 and the International Insurance Act 1988. Changes in legislation occurred in 2005 when the Samoa International Finance Authority Act established SIFA to regulate and promote Samoa as a modern offshore centre to the world.

### SAMOA INTERNATIONAL COMPANIES (IC)

The International Companies Act was modernized in 2005 and is gaining increasing popularity due to its flexibility and particularly the confidentiality provisions requiring government officials as well as trustee company and bank employees to observe strict secrecy.

### INCORPORATION

IC's can be incorporated limited by shares, guarantee or both shares and guarantee. There is provision to register a foreign company under the IC Act where it has a permanent establishment or is carrying on business in Samoa without registration under the local Companies Act.

Standard incorporation procedures are followed in filing documents with the Companies Registry, including filing the memorandum and articles of association. Shelf companies are available but turn around time on a standard incorporation request can be as little as 24 hours once all information is received and depending on the Companies Registry opening hours. Documents can be faxed or emailed with originals to follow.

### STATUTORY PROVISIONS

#### Shares and Share Capital

There is no minimum share capital requirement or capital duty on share capital. Fully paid registered shares may be issued as bearer shares transferable by delivery. Fully paid registered shares or bearer shares may be exchanged for share warrants to bearer, also transferable by delivery. Redemption of shares and reductions of capital can be effected simply and quickly and without the necessity of a court order. A company may finance the purchase, repurchase and cancel of its own shares.

#### Share Registers

ICs must maintain registers of shareholders and directors. However, there is no requirement to file them with the Registrar.

#### Long-term International Companies

Samoa allows the registration of IC's on a long-term basis, i.e. for periods of 5, 10, or 20 years. Upon expiry, registration can be renewed on an annual basis or for further long-term periods. Long-term IC's benefit from substantially discounted Government registration fees and avoid the necessity of annual renewals.

#### Foreign Language Incorporation

A popular feature of the IC Act is that IC's may be incorporated in any language including the IC name and its memorandum and articles. Chinese characters are allowed.



### **Registered Office/Agent**

Each IC must have a registered office and either a registered agent or local secretary.

### **Directors and Company Secretary**

An IC must have at least one director but there is no residency requirement. Directors may be corporations or natural persons. Every IC must appoint a secretary and it is optional that they are resident in Samoa. If an IC does not appoint a resident secretary, then they must appoint a registered agent.

### **Shareholders' Meetings**

In the absence of a public offering, shareholders can agree not to have Annual General Meetings. Meetings may be held by the latest technological means and do not have to be held in Samoa.

### **Books, Records and Common Seal**

An IC must keep accounts at the registered office as the directors deem to be necessary to reflect the financial position of the IC. In the absence of a public offering, IC's are not required to audit or file their accounts and annual returns do not have to be filed. It is optional for an IC to have a common seal under the IC Act.

### **Registration of Charges**

An IC must keep a register of charges however the public registration of charges is optional. If the charge is not registered, it can affect enforcement.

### **Redomiciliation**

IC's can migrate into and out of Samoa upon payment of a prescribed fee. An IC may also upon approval of SIFA, transfer to Samoa domestic company status.

### **Strike-off and Restoration**

IC's that fail to pay their annual fees are struck from the Companies Registry. However, if they pay their fees and a penalty, they are restored as if they were never struck off.

### **Tax exemptions and Exchange Control**

IC's are exempt from taxation in Samoa including stamp duty, capital gains tax, capital duty and withholding tax. There is no exchange control.

## **LIMITED LIABILITY COMPANIES (LLCs)**

The IC Act also provides for all the necessary features of this entity that are traditional now in offshore jurisdictions. The Samoa LLC is based on the USA Wyoming legislation and allows a Samoa LLC to be interpreted by the USA IRS as a transparent entity for income tax purposes.

### **INCORPORATION (FORMATION)**

The same formation procedures as an IC are followed with the exception that a memorandum requires specific details of the LLC as subscribed in the IC Act. There may also be an operating agreement. The documents are known as the memorandum and articles of organization.

## **STATUTORY PROVISIONS**

### **Registered Office/Agent**

An LLC must also have a registered office and registered agent that must be a trustee company, officer of a trustee company or a wholly owned subsidiary of a trustee company.

### **Operating Agreement**

A written agreement concerning the affairs of an LLC and conduct of its business may be entered into by the members of the LLC before, after or at the time of the signing of the articles of organization.

### **Admission of Members**

A person acquiring an interest in an LLC becomes a member at the time of formation of the LLC or the time provided for in and upon compliance with the operating agreement. There are restrictions on becoming a member.



### **Liability to Third Parties**

Every LLC under the IC Act is a company limited by shares. The debts, obligations and liabilities of an LLC are solely those of the LLC. They are unrelated to the manager or members of the LLC.

### **Managers and Management of the LLC**

A person may be named in the articles of organization or operating agreement as a manager of an LLC by the members. This person is elected annually by the members. If no manager is named, the management of the LLC is in proportion to the percentage share of the profits of the members.

### **Resignation of Members**

A member may resign upon the happening of events specified in the operating agreement.

### **Nature of the Interest**

An LLC interest is personal and a member has no interest in any specific LLC property. The LLC interest constitutes a personal estate of a member and may be transferred pursuant to the articles of organization or operating agreement. Other members may block the transferee in participating in management and they can limit involvement to profit taking.

### **Dissolution and Strike Off from the Register**

The term of an LLC is 50 years or otherwise as provided for by the operating agreement. An LLC may be dissolved before the fixed term expiry if there is: unanimous written consent of all members, a share transfer in contravention of the articles of organization or where a member is discontinued and then remaining members do not continue business. A dissolved LLC may be struck from the Register but it may also be restored upon the payment of the requisite fees.

### **Continuation and Departure**

An LLC can continue as either an IC or a domestic company. A foreign LLC can also continue into Samoa. An LLC may also depart from Samoa and continue under the laws of the jurisdiction to which it is redomiciling.

### **Apostille and Authentication/Legalization processes**

LLC documents can be apostilled through the Registrar and Ministry of Foreign Affairs. Further, LLC documents can be authentication/legalized by the People's Republic of China (PRC) Embassy in Samoa, or the Republic of China (ROC) Embassy in Fiji for purpose of trade or investment into China and Taiwan respectively.

### **Renewal**

The renewal dates of an LLC are the same as with an International Company incorporated under the IC Act, namely 30 November in the year subsequent to incorporation.

### **Exemption from Taxation**

An LLC is exempt from all forms of taxation.

## **OTHER TYPES OF ENTITIES**

Samoa's offshore legislation also allows for International and Limited Partnerships and the establishment and operation of international insurance activities including captive insurance and re-insurance companies. Segregated fund portfolio legislation is in place and mutual fund legislation is planned.

## **SAMOA TRUSTS**

The International Trusts Act 1987 (IT Act) provides for the creation and recognition of trusts under Samoan law. The general law of trusts in Samoa is that derived from the English Courts of Equity. The IT Act is being modernised at present by the Samoa International Finance Authority (SIFA).

### **CREATION**

Trusts must be registered under the IT Act. A trust may include dispositions or settlements of trust property, powers in nature of trust coupled with a trust, powers of appointment whether inter vivos or testamentary and implied or constructive trust.



## STATUTORY PROVISIONS

### **International Trust Definition**

An international trust is defined in the IT Act generally where the trustee is a trustee company, international company or foreign company registered under the IC Act and the beneficiaries are at all times non-resident of Samoa.

### **Application of Law**

There is a definitive ordering in which the law is to be applied in Samoa under the IT Act. Courts shall apply the IT Act, then English Common Law and Equity at the time in force in Samoa where not excluded by the IT Act, the law of any foreign country of the execution of the trust, the trustees residence or domicile, the trust property or where the settlor, beneficiaries are normally resident or domiciled.

### **Charitable and Purpose Trusts**

Specific provision is made for the settlement of charitable trusts as long as the charitable purpose is for the relief of poverty, advancement of education, religion or for community benefit. General purpose trusts are allowed where the settlor is non-Samoan resident, the trust vests to a natural person in the perpetuity period, the trust is enforceable by the settlor or that person establishing the trust and that person cannot be a beneficiary.

### **Trustees**

At least one of the trustees must be a trustee company, an international company or a foreign company registered under the IC Act.

### **Confidentiality**

Wide ranging confidentiality provisions are included in the IT Act relating to the affairs of trusts. Severe criminal and fiscal sanctions apply for divulging information.

### **Creditor Protection**

Unless the creditor proves to the Courts that the settlor intended to defraud creditors, the trust remains valid through the settlor's bankruptcy, liquidation or any action or proceedings.

### **Registration of Trusts**

For the benefits of the IT Act to apply the trust must be registered with the Registrar of International Trusts under the Act.

### **Disclosure**

Every registration application must be accompanied by a fee, trustee certificate that the trust will be an international trust, name and registered office of the trustee and name of the trust. The trust instrument itself and the name of the settlor and beneficiaries do not need to be filed.

### **Registered Office**

A trust must maintain a registered office in Samoa which shall be the registered office of the representative trustee.

### **Exemption from Taxes**

Trusts are completely tax free as long as the settlor or any of the beneficiaries are not resident in Samoa and the trust does not transact in Samoa except for banking business.

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