



SAMOA

**COMPANY LAW REFORM (TRANSITIONAL
PROVISIONS) ACT 2006**

Arrangement of Provisions

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**COMPANY LAW REFORM (TRANSITIONAL
PROVISIONS) ACT**

2006

No. 17

AN ACT to amend various Acts consequent upon the enactment of the Companies Act 2001 and certain other Acts and provide for certain transitional and savings arrangements.

*[Assent date: 4 December 2006]
[Commencement date: 1 July 2008]*

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

1. Short title – This Act may be cited as the Company Law Reform (Transitional Provisions) Act 2006.

2. Commencement – (1) This Act comes into force on the commencement of the Companies Act 2001.

(2) Notice of commencement of this Act shall be published in Samoan and English in the Savali and 1 other newspaper circulating in Samoa.

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3. Acts amended – The Acts specified in the Schedule are amended in the manner indicated in that Schedule.

4. Transitional provisions – (1) A reference in any enactment to a company incorporated under the Companies Act 1955 or to which that Act applies is, unless the context otherwise requires, to be read as including a company registered under the Companies Act 2001 or to which that Act applies.

(2) A reference in any enactment to a provision of the Companies Act 1955 is, unless the context otherwise requires, to be read and construed as a reference to the corresponding provision of the Companies Act 2001 or the Receiverships Act 2006 or the Securities Act 2006, as the case may be.

5. Regulations – (1) Subject to subsection (2), the Head of State, acting on the advice of Cabinet, may make regulations prescribing transitional and savings provisions relating to the coming into force of the Companies Act 2001 or the Receiverships Act 2006 or the Securities Act 2006, as the case may be, and any such regulations may provide that, during a specified transitional period and subject to any conditions that are specified in the regulations:

- (a) specified provisions of any of those Acts amended by this Act do not apply in the circumstances specified in the regulations; or
- (b) specified provisions of any of those Acts amended by this Act apply with any modifications that may be set out in the regulations in the circumstances specified in the regulations.

(2) Any regulations under subsection (1) must be made before the close of the transition period (as defined in section 333(7) of the Companies Act 2001), and any regulations so made expire on a date specified in the regulations that is not later than 2 years after the date on which the regulations are made.

**SCHEDULE
(Section 3)**

ACTS AMENDED

Insurance Act 1976

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1. Insert after section 6(1)(c):

“(d) if the applicant is a company registered under the Companies Act 2001:

(i) the shareholders of the applicant must not agree to the financial statements of the applicant being completed more than 5 months after the balance date of the applicant; and

(ii) the rules of the applicant must require an auditor to be appointed.”

2. Insert after section 8:

“**8A. Interpretation** - In sections 8A, 8B, and 8C of this Act, unless the context otherwise requires:

“company”:

(a) means a company within the meaning of the Companies Act 1955 or the Companies Act 2001, as the case may be; and

(b) includes an overseas company;

“director”, in relation to:

(a) a company, includes:

(i) any person occupying the position of director by whatever name called; and

(ii) a person in accordance with whose instructions the persons occupying the position of directors of the company are accustomed to act;

(b) an overseas company, includes an agent, officer, or employee responsible in Samoa for the business of the overseas company;

“net assets”, in relation to a company, means net assets clear of all claims or demands or other liabilities for the time being due or pending or

enforceable against the company, not being contingent liabilities arising out of or in relation to the insurance business of the company;

“overseas company” means a company incorporated outside Samoa;

“shareholder” includes a member of a company within the meaning of the Companies Act 1955.

8B. Net assets required for companies carrying on insurance business - (1) Subject to the exceptions set out in subsection (2), a company must not carry on insurance business in Samoa if its net assets are less than \$100,000.

(2) The exceptions referred to in subsection (1) are as follows:

(a) a company whose net assets are not less than \$50,000 may carry on insurance business in Samoa, but only for a period of 8 months from the date of its registration, after which time the company must not carry on insurance business in Samoa if its net assets are less than \$100,000:

(b) despite anything to the contrary in subsection (1) or paragraph (a), a company whose net assets are not less than \$50,000 may carry on the business of insuring the property of its shareholders.

(3) If a company carries on insurance business in contravention of subsections (1) or (2):

(a) the shareholders of the company are liable for all obligations incurred or entered into by the company during the time of the contravention despite any limitation of liability in any other enactment or in the rules or equivalent document of the company; and

(b) the company commits an offence and is liable on conviction to a fine not exceeding 100 penalty units; and

(c) every director of the company commits an offence and is liable on conviction to a fine not exceeding 100 penalty units.

(4) It is a defence to a director charged with an offence against subsection (3)(c) if the director proves that -

(a) the director did not, and could not reasonably have been expected to, know of the contravention; or

(b) the director took all reasonable steps to ensure that the requirements of that subsection would be complied with.

8C. Application for shares not to be contained in proposal for insurance - (1) A form of proposal for insurance that contains or appears to be an application for membership of, or shares in, a company must not be issued by or on behalf of the company.

(2) If any person makes a proposal for insurance to a company, the company must not allot shares to that person or admit that person as a member or shareholder without first receiving an application for membership or shares that is contained in a document separate from the proposal for insurance.

(3) If a company does not comply with this section:

(a) the company commits an offence and is liable on conviction to a fine not exceeding 100 penalty units; and

(b) every director of the company commits an offence and is liable on summary conviction to a fine not exceeding 100 penalty units.

(4) It is a defence to a director charged with an offence against subsection (3)(b) if the director proves that:

(a) the company took all reasonable and proper steps to ensure that the

requirements of this section would be complied with; or

(b) the director took all reasonable steps to ensure that the company complied with the requirements of this section; or

(c) in the circumstances, the director could not have reasonably been expected to take steps to ensure that the company complied with the requirements of this section.

(5) Nothing in this section affects the validity of a policy of insurance or an admission to membership, or an allotment of shares, of a company.”.

3. Repeal section 10 and insert the following:

“10. Interpretation - In sections 10A to 10C, unless the context otherwise requires:

“company” means a company within the meaning of the Companies Act 1955 or the Companies Act 2001, as the case may be;

“insurance company” means any company, overseas company, or other body corporate or unincorporate, that is or has been carrying on insurance business in Samoa;

“overseas company” means a company incorporated outside Samoa.

10A. Courts orders for contravention of insurance company’s licence, etc - (1) The Minister may apply to the Supreme Court for any of the orders specified in subsection (2) if it is proved by the Minister to the satisfaction of the Supreme Court that an insurance company:

(a) has contravened any condition of the insurance company’s licence; or

(b) has failed or refused to comply with any direction or other requirement of this Act or any regulation made under this Act; or

(c) is likely to be unable to fulfil any of the obligations incurred by the insurance company in the course of its insurance business.

(2) The orders referred to in subsection (1) are as follows:

- (a) an order that the licence of the insurance company be cancelled;
- (b) an order that the licence of the insurance company be suspended until, on further application to the Supreme Court by the insurance company, the insurance company satisfies the Supreme Court that the suspension should be revoked;
- (c) an order that the insurance company be wound up or put into liquidation.

10B. Insurance companies that are wound up or put into liquidation - (1) Subject to subsection (2), subpart 3 of Part 9 of the Companies Act 2001 applies, with the necessary modifications, to an insurance company to which a liquidator is appointed on the application of the Minister under section 10A(2)(c) as if references to:

- (a) a company registered or incorporated under the Companies Act 2001 included a reference to an insurance company; and
- (b) a director included references to any person occupying the position of a director by whatever name called; and
- (c) shareholders or to persons entitled to surplus assets under the rules of a company and the Companies Act 2001, were references to persons that the Supreme Court may determine to be justly entitled to any surplus assets after the satisfaction of the claims of all creditors.

(2) If the Supreme Court makes an order appointing a liquidator of an insurance company, the Supreme Court may make the appointment on any conditions that it thinks fit, and may limit or exclude the exercise of any power that would otherwise be conferred on the liquidator under the Companies Act 2001.

(3) Regulations made under the Companies Act 2001 may regulate the practice and procedure to be followed in respect of the liquidation of an insurance company on the application of the Minister under section 10A(2)(c).

(4) Despite anything to the contrary in the Companies Act 2001, no insurance company that is liable under any life policy may be put into liquidation by:

- (a) a special resolution of those shareholders entitled to vote on the question; or
- (b) the directors of the company on the occurrence of an event specified in the rules or equivalent document of the insurance company.

10C. Evidential matters concerning Court orders under section 10A - (1) Despite any other Act or rule of law, the following are admissible as evidence at the hearing of an application under section 10A(1):

- (a) a report prepared by a person in relation to an inspection carried out by that person under section 9(a);
- (b) a report by an auditor under section 9(b);
- (c) any information provided to the Minister under section 9(c);
- (d) any accounts, books, papers, records or other documents lodged with the Minister under any regulations made under this Act or kept or prepared under sections 129 and 130 of the Companies Act 2001, as the case may be.

(2) At a hearing of an application under section 10A(1), evidence that an insurance company was unable to fulfil its obligations at the end of the period to which the most recent audited statement of financial position of the insurance company provided to the Minister under section 9(a) or under any regulations made under this Act or prepared under section 130 of the Companies Act 2001, as the case may be, is evidence that the insurance company continues to be unable to fulfil its obligations unless the contrary is proved by the insurance company.”.

Stamp Duty Ordinance 1932

1. Insert after section 3(3):

“(4) To avoid doubt, no stamp duty shall be charged in respect of any application for incorporation of a company under the Companies Act 2001, or in respect of any rules of incorporation adopted by a company under that Act, whether at the time of incorporation or otherwise.”.

2. Add to the List of Exemptions in paragraph 1 of the Schedule, after paragraph (d):

“(e) Company Charges -

- (i) any charge document within the meaning of clause 1 of Schedule 1 of the Companies Act 2001 applies;
- (ii) any priority document within the meaning of clause 1 of Schedule 1 of the Companies Act 2001;
- (iii) any alteration document within the meaning of clause 1 of Schedule 1 of the Companies Act 2001.

Nothing in this paragraph exempts a mortgage of land, variation of priority of mortgage of land, or

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a variation or release of a mortgage of land from liability for duty.”.

3. Repeal paragraph 9 of the Schedule.

4. Add to the List of Exemptions in paragraph 11 of the Schedule, after paragraph (d):

“(e) Company Charges -

- (i) any charge document within the meaning of clause 1 of Schedule 1 of the Companies Act 2001;
- (ii) any priority document within the meaning of clause 1 of Schedule 1 of the Companies Act 2001;
- (iii) any alteration document within the meaning of clause 1 of Schedule 1 of the Companies Act 2001.”.

Nothing in this paragraph exempts a mortgage, variation of priority of mortgage, or a variation or release of a mortgage from liability for duty.”.

REVISION NOTES 2008 – 2022

This is the official version of this Act as at 31 December 2022.

This Act has been revised by the Legislative Drafting Division from 2008 – 2022 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Insertion of the commencement date
- (b) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” changed to “a” or where appropriate
 - (ii) Numbers in words changed to figures

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Note that this Act has achieved its purpose as it deals with transitional matters and consequential amendments to other Acts.

*This Act is administered by
the Ministry of Commerce, Industry and Labour.*