

SAMOA INTERNATIONAL FINANCE AUTHORITY 2005

SAMOA

Arrangement of Provisions

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| 1. Short title and commencement | Registrar of International and Foreign Companies |
| 2. Interpretation | Department of Central Bank |
| 3. Establishment of the Samoa International Finance Authority (SIFA) | 16. Financial provisions |
| 4. Functions of the Authority | 17. Revenues of the Authority and fees |
| 5. Powers of the Authority | 18. Payment to Government |
| 6. Board of Directors | 19. Financial Year |
| 7. Deputies of Directors | 20. Accounts, Audit and Annual Report |
| 8. Remuneration of Directors | 21. Transfer of property to the Authority |
| 9. Meetings of the Board | 22. Immunity |
| 10. Chief Executive Officer | 23. Exemption from taxation |
| 11. Delegation | 24. Regulations |
| 12. Board may establish Committees | 25. Savings and transitional arrangements |
| 13. Disclosure of Interest | 26. Consequential amendments |
| 14. Appointment of Officers of the Authority | |
| 15. Provisions for existing employees of the Office of | Schedule |

AN ACT to establish the Samoa International Finance Authority and to prescribe its functions, powers and duties.

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

1. Short title and commencement-(1) This Act may be cited as the Samoa International Finance Authority Act 2005.

(2) This Act or any part or section thereof shall come into force on a date or dates to be nominated by the Minister.

(3) Notice of commencement of this Act or any part or section thereof shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

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

"Authority" means the Samoa International Finance Authority established under section 3:

"Board" means the Board of Directors established under section 6:

"Central Bank" means the Central Bank of Samoa established under the Central Bank of Samoa Act 1984:

"Chief Executive Officer" means the Chief Executive Officer of the Authority established under section 10:

"controller" has the same meaning as provided in section 2 of the International Banking Act 2003:

"Government" means the Government of the Independent State of Samoa:

"international financial services" includes the carrying on of and the provision of services in relation to the businesses of trustee companies, banking, insurance, investment, asset management, trusteeship or company administration or the provision and administration of corporate and other business structures and any matters ancillary to such businesses or structures, pursuant to any international financial services legislation:

“international financial services legislation” means the International Companies Act 1987, the Trustee Companies Act 1987, the International Banking Act 2003, the International Trusts Act 1987, the International Insurance Act 1988, the International Partnership and Limited Partnership Act 1998, the Segregated Fund International Companies Act 2000 and any successor legislation to those Acts or any other legislation as may, from time to time, be designated by the Minister as being international financial services legislation under this Act:

“Minister” means the Minister of Finance.

(2) Any reference in this Act to an enactment is, unless the context otherwise requires, a reference to that enactment as amended, extended, re-enacted, or applied by or under any other enactment, including this Act.

3. Establishment of the Samoa International Finance Authority (SIFA)-(1) There is established a body corporate called the “Samoa International Finance Authority” or by its acronym, “SIFA”, which shall have the functions and powers conferred on it under this Act.

(2) The Authority shall -

- (a) have perpetual succession and a common seal;
- (b) be capable of suing and being sued in its corporate name;
- (c) be capable of entering into contracts, acquire, hold and dispose of real and personal property and be capable of doing all such other acts and things as bodies corporate may lawfully do;
- (d) be capable of exercising all such authorities and powers as shall be necessary or expedient for the due administration of this Act.

(3) The Chief Executive Officer shall have custody of the common seal, which shall only be affixed to a document pursuant to a resolution of the Board, and which shall be attested to by the signature of the Chairperson of the Board and one other Director or in the absence of the Chairperson by a director nominated by the Board and one other director.

4. Functions of the Authority - The functions of the Authority are -

- (a) to monitor and supervise the conduct of international financial services provided within Samoa;
- (b) to protect and maintain the good repute of Samoa as a centre for international financial services;
- (c) to ensure coordination and cooperation between the public sector agencies, private corporations and non-governmental organisations concerned in any way with international financial services;
- (c) to promote Samoa as a centre for international financial services;
- (e) to make recommendations for the creation and the improvement of any facilities likely to enhance the attraction of Samoa as a centre for international financial services;
- (f) to make recommendations for the introduction, amendment or replacement of legislation pertaining to international financial services, companies and other forms of business structures;
- (g) to carry out research and commission studies on the international business sector and related services;
- (h) to develop national objectives, policies and priorities for the orderly administration of international financial services in Samoa;
- (i) to be responsible for the general administration of international financial services legislation and for the collection of all fees, charges and other revenue due thereunder;
- (j) to advise and make recommendations to the Government generally on any matter relating to international financial services; and
- (k) such other functions in relation to international financial services as may by Order be made by the Head of State.

5. Powers of the Authority-(1) The Authority shall have such powers as necessary or incidental to the proper performance of its functions.

(2) Without prejudice to the generality of the provisions of subsection (1), and in addition to any other powers provided for by this Act, the Authority shall have the following powers -

- (a) to purchase, lease, sub-lease or otherwise acquire and hold any property, whether movable or immovable, required for the carrying out of its functions and dispose of any such property no longer required for such purposes;
- (b) to develop its land or other property and erect and maintain buildings or other structures;
- (c) to purchase, rent, or erect houses for the use of its officers and employees;
- (d) to enter into any contract with any person for the supply to or by it of any goods or services;
- (e) to pay any expenses it has properly incurred;
- (f) to produce, publish, issue, circulate and distribute, whether for payment or otherwise, in paper, electronic or magnetic form such reports, papers, periodicals or other information as may be conducive to the carrying out of its functions;
- (g) to provide training schemes, with the cooperation of such other persons or bodies as the Authority thinks fit, for its employees or other persons concerned with international financial services;
- (h) to utilize its property, whether movable or immovable, in such manner as it thinks fit, including the raising of loans by using such property as security for such loans;
- (i) establish pension schemes or other welfare schemes for the benefit of its officers and employees in accordance with government policy; and
- (j) to do all things which may be incidental to any of its powers and functions.

6. Board of Directors-(1) The Authority shall be administered by a Board of Directors, comprising not less than four or more than seven Directors, who shall be responsible for the policy and general administration of the Authority.

(2) The Board shall consist of -

- (a) the Governor of Central Bank, who shall be the Chairperson;
- (b) the Chief Executive Officer of the Ministry of Finance;
- (c) the Attorney General;
- (d) the Chief Executive Officer; and
- (e) up to three directors with a financial services background and with relevant knowledge, experience and expertise which could aid the Authority in the performance of its functions.

(3) Any person appointed a director pursuant to subsection (2)(e) shall:

- (a) Be appointed by the Head of State acting on the advice of Cabinet;
- (b) Not be a controller, director, officer, manager or employee of a licensed trustee company under the Trustee Companies Act 1987;
- (c) Hold office for a period of three years and may be eligible for re-appointment; and
- (d) Be entitled to resign from office by delivering a written notice to that effect to the Chairperson.

(4) The Board may co-opt any person to assist it at any of its meetings, provided that such co-opted person shall have no right to vote at any Board meeting.

7. Deputies of Directors-(1) If any director of the Board, other than a director appointed under section 6(2)(e), is temporarily incapacitated for any sufficient cause from attending a meeting of the Board, such director may authorise a senior officer from their Ministry, agency, firm or corporation, as the case may be, to attend that meeting as the deputy of such director.

(2) Any deputy whilst acting as such, shall be deemed to be a member of the Board.

(3) The appointment of any deputy Director, and any act done by the deputy as a Board member shall:

- (a) Not be questioned in any proceedings on the ground that the occasion for the deputy's appointment had not arisen or had ceased;
- (b) Not be a ground to invalidate the decisions of the Authority made during any meeting at which such deputy was purporting to act as appointed.

8. Remuneration of Directors - Directors and deputy Directors of the Board shall be paid such remuneration, sitting allowance, travelling and other expenses as may from time to time be fixed by Cabinet.

9. Meetings of the Board-(1) The Chief Executive Officer may call meetings of the Board as often as may be required at such times and such places as the Chief Executive Officer shall from time to time determine provided that:

- (a) The Board shall meet at least once every two months;
- (b) Upon the written request of at least two members of the Board, the Chief Executive Officer shall call a meeting of the Board at a date not more than 14 days after receipt of the request.

(2) The quorum at all meetings of the Board shall be 50% of the appointed directors who are eligible to vote under the provisions of section 13.

(3) Any matters arising at a meeting of the Board shall be decided by a simple majority of the members present and voting, and in the case of an equality of votes, the Chairperson shall have a casting vote.

(4) All orders and directions of the Board shall be given under the hand of the Chief Executive Officer or, in the Chief Executive Officer's absence by a director specifically authorized and appointed by the Board.

(5) The Board shall keep proper minutes of its proceedings.

(6) Every meeting of the Board shall be presided over by the Chairperson, or in the Chairperson's absence, by a director elected by the Board to chair the meeting.

10. Chief Executive Officer-(1) A Chief Executive Officer of the Authority may be appointed from time to time by Cabinet acting on the advice of the Minister on such terms and conditions as it deems fit.

(2) The Chief Executive Officer shall be a person with relevant qualifications, experience and competence in international financial services.

(3) The Chief Executive Officer shall be the Chief Executive Officer of the Authority and shall in addition perform such other functions and exercise such other powers as are from time to time conferred by this or any other Act or regulation.

(4) The Chief Executive Officer may, with the approval of the Board, delegate the performance of any of the Chief Executive Officer's functions or the exercise of any of the Chief Executive Officer's powers to an employee or officer of the Authority.

(5) In the event of the removal or suspension from office of the Chief Executive Officer, Cabinet acting on the advice of the Minister shall appoint another person to act as Acting Chief Executive Officer under this Act until the Chief Executive Officer is appointed or resumes office.

(6) The Chief Executive Officer shall be eligible for re-appointment upon the expiry of the term of appointment.

11. Delegation-(1) The Board may, either generally or as otherwise provided by the instrument of delegation under its common seal, delegate to the Chief Executive Officer any of its powers and the powers of the Authority under this Act, other than this power of delegation.

(2) Where a power of delegation under subsection (1) relates to the grant of a licence or certificate, the Chief Executive Officer shall not issue such licence or certificate except in accordance with the terms of the delegation, instructions, guidelines or conditions imposed by the Board.

(3) A power delegated under subsection (1) shall, when exercised by the Chief Executive Officer, be deemed to have been exercised by the Authority.

(4) A delegation under this section does not prevent the exercise of any power by the Board.

(5) A delegation under this section is revocable at the will of the Board.

12. Board may establish Committees-(1) The Board may establish special committees to which members shall be appointed, and may refer to any such committee any matters for consideration, inquiry or management.

(2) The Board may by special resolution at any of its meetings adopt written rules of procedure for such committees.

13. Disclosure of Interest-(1) A member of the Board who has any direct or indirect personal or pecuniary interest in any matter coming before the Board shall, on each and every occasion on which the matter comes before the Board, and as soon as possible after the relevant facts have come to the member's knowledge, declare their interest in the matter.

(2) Subject to subsection (3), a disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Board and the member shall not -

(a) be present during any deliberation of the Board with respect to that matter; and

(b) take part in any deliberations or vote of the Board with respect to that matter.

(3) Where as a result of the operation of subsection (2) the Board is unable to maintain a quorum to determine a matter, the Board member or members affected, after complying with

subsection (1), may take part in any deliberations of the Board with respect to the matter and may vote on the matter and the minutes of the meeting of the Board shall record the reason for the affected member's or members' participation in any deliberations and vote.

14. Appointment of Officers of the Authority-(1) The Authority may appoint, at such remuneration and upon such terms and conditions as it thinks fit, such officers, employees, agents, advisers or consultants as it thinks necessary for the proper and efficient discharge of its functions and may dismiss any such officer, employee, agent, adviser or consultant as the Authority determines.

(2) The Authority may make rules for regulating the terms of service, discipline and training of all persons employed by or acting on behalf of the Authority.

(3) The officers, employees and other persons acting on behalf of the Authority shall be responsible to and under the control of the Chief Executive Officer.

15. Provisions for existing employees of the Office of Registrar of International and Foreign Companies Department of Central Bank-(1) Upon the commencement of this Act, every employee of the Office of the Registrar of International and Foreign Companies Department of Central Bank -

- (a) may be offered employment with the Authority on new terms and conditions as may be mutually agreed upon by such employee and the Authority;
- (b) may retire or be retired from service on such terms as may be determined in accordance with law; or
- (c) may be transferred within the Central Bank on such terms and conditions as may be determined by the Central Bank.

(2) All the rights, powers, duties and liabilities, including loans advanced to the said employees by the Central Bank that accrued under or in connection with the contract of employment with the Central Bank, shall be enforceable by or against the Authority as if it were made between that employee and the Authority.

16. Financial provisions - The Authority shall establish a General Fund –

- (a) into which all money received by the Authority shall be paid; and
- (b) out of which all payments required to be made by the Authority shall be effected, provided that if there are insufficient moneys in that Fund to meet the expenses referred to herein, then the deficit shall be funded by appropriation in accordance with Article 94 of the Constitution.

17. Revenues of the Authority and fees-(1) The revenues of the Authority shall consist of –

- (a) such fees, charges and penalties payable under international financial services legislation or under any other Act or regulation as may be assigned to the Authority by that Act or regulation;
- (b) such grants as may from time to time be provided to it by the Government;
- (c) such other funds as may properly accrue to the Authority from any other source.

(2) Consistent with any policy of the Government and any applicable law, the Authority may invest any of its monies that are not immediately required for the discharge of its functions.

(3) The Authority may charge a fee -

- (a) in respect of costs reasonably incurred in the performance of its duties under this or any other Act; and

- (b) for any services provided by it otherwise than in pursuance of an obligation imposed by this or any other Act.

18. Payment to Government - The Authority shall pay each year into the Government Treasury Fund such amount, if any, as shall be determined by the Minister acting on the advice of the Authority.

19. Financial Year - The financial year of the Authority shall begin on the 1st day of July of each year and shall end on the 30th day of June of that year; except that the first financial year of the Authority shall begin on the date of the commencement of this Act and shall end on the 30th day of June of that year.

20. Accounts, Audit and Annual Report-(1) The Authority shall at all times keep full and correct records of accounts of money received and expended by the Authority and of all transactions, assets, liabilities and funds.

(2) The Authority shall cause a statement of its accounts for each financial year to be prepared within two months after the end of the financial year.

(3) The accounts of the Authority shall be audited by an auditor appointed by the Authority with the approval of the Minister.

(4) As soon as practicable, and in any event no later than three months after the completion of the audit of its accounts for any financial year, the Authority shall prepare and submit to the Minister a written report of its operations for that year together with a copy of the audited accounts.

(5) The Minister shall cause a copy of the report and audited accounts to be tabled in the Parliament as soon as practicable.

21. Transfer of property to the Authority - As from the commencement date of this Act -

- (a) all lands, buildings, plant, machinery, apparatus, equipment and other property, whether moveable or immovable, which are held, by or on behalf of the Government or the Central Bank, by the Office of the Registrar of International and Foreign Companies; and
- (b) all assets, powers, rights, interests and privileges as well as all debts, liabilities and obligations of the Office of the Registrar of International and Foreign Companies,

shall be transferred to and be vested in and held by the Authority.

22. Immunity-(1) No action shall lie against the Government, the Minister, the Authority, the Chief Executive Officer or any board member, officer, employee or agent of the Authority or any person acting pursuant to any authority conferred by the Authority or the Chief Executive Officer, as the case may be, in respect of any act or matter done or omitted to be done in good faith in the exercise or purported exercise of their respective functions conferred by or under this Act or any regulations made thereunder.

(2) The legal costs of defending any action instituted against the Minister, the Chief Executive Officer or any board member, officer, employee or agent of the Authority or any person acting pursuant to any authority conferred by the Authority or the Chief Executive Officer, as the case may be, may be borne by the Authority.

23. Exemption from taxation - The Authority shall not be liable to taxation except for customs and excise duties and value added goods and services tax.

24. Regulations-(1) The Head of State, acting on the advice of Cabinet, may from time to time, make such regulations as are necessary or convenient for the purpose of carrying out or giving full effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), regulations may be made for the purposes of -

- (a) prescribing forms for certificates, licenses, notices, approval or any other matter under this Act;
- (b) prescribing the fees payable and the rate at which such fees are to be calculated, and providing for the recovery and application of such fees, in respect of any matter under this Act; and
- (c) creating offences and penalties for breaches of those offences up to a maximum of 100 penalty units.

(3) Where forms are prescribed under subsection (2) then the Authority shall use the prescribed forms, but nothing in this section shall prevent the Authority from using or requiring the use of forms approved by the Board, if no applicable form has been prescribed.

25. Savings and transitional arrangements-(1) Any authorisation, registration, appointment, approval, cancellation, suspension, condition, declaration, petition, permit, prohibition, exemption, order, advice, direction or other act of authority made or imposed by the Minister in relation to the Minister's powers and functions under international financial services legislation prior to the coming into operation of this Act, shall, so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

(2) Any application, registration, approval, or authorisation or other act of authority made by the Registrar of International Insurance in relation to the Registrar of International Insurance's powers and functions under the International Insurance Act 1988 prior to the coming into operation of this Act, shall, so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

(3) Where prior to the commencement of this Act an application, request or petition had been made to the Minister in respect of any license, permit, authorisation or approval required to be given by the Minister under international financial services legislation and which has not been completed or otherwise determined, such application, request or petition

shall continue to be dealt with and completed or otherwise determined in all respects as if this Act had not been enacted.

(4) Where prior to the commencement of this Act an application had been made to the Registrar of International Insurance in respect of any registration required under the International Insurance Act 1988 and which has not been completed or otherwise determined, such application shall continue to be dealt with and completed or otherwise determined in all respects as if this Act had not been enacted.

26. Consequential amendments - The Acts specified in the Schedule shall be amended in accordance with the provisions of the Schedule.

SCHEDULE – Section 26

Enactment	Extent of Amendment or Repeal
International Companies Act 1987	By amending section 2 by inserting between the terms “Audit period” and “Bearer debenture” and their definition the following term and definition: “Authority” means the Samoa International Finance Authority established under the Samoa International Finance Authority Act 2003”; By amending sections 8, 22, 158, 159, 163, 186, 200, 210, 224, 225, and 227 by deleting the word “Minister” wherever it appears and substituting the word “Authority”;
	* By amending section 210(3) by deleting the word “his” wherever it appears and substituting the word “its” and deleting the word “he” and substituting the word “it” wherever it appears;

- * By amending section 224(1) by deleting the word “he” and substituting the word “it”;

By amending section 226 by inserting after the words “exercise by the Head of State or any Minister” the words “or any statutory body or authority of Samoa”.

- * By amending sections 227(4)(g) and 227(6) by deleting the word “his” and substituting the word “its”.

**Trustee Companies Act
1987**

By amending section 2 by inserting before the term “Carry on business” and its definition the following term and definition:

“Authority” means the Samoa International Finance Authority established under the Samoa International Finance Authority Act 2003”;

By amending sections 5,6,7,8,9,10,11 and 20 by deleting the word “Minister” wherever it appears and substituting the word “Authority”;

- * By amending sections 6(1), 7 and 9(1) by deleting the word “he” and substituting the word “it”;
- * By amending sections 7, 9 and 10 by deleting the word “his” wherever it appears and substituting the word “its”;

By amending the section 36 subtitled “Immunity” by deleting the number 36 and inserting in its place the number 37;

By amending the new section 37 by inserting after the words “of Samoa, the Minister” the words “the Authority,” and by inserting after the words “the Minister or the Registrar” the words “or the Authority”.

**International Trusts Act
1987**

By amending section 2 by inserting before the term “Central Bank” and its definition the following term and definition:

“Authority” means the Samoa International Finance Authority established under the Samoa International Finance Authority Act 2003”;

By amending sections 14, 19, 23, 28 and 28B by deleting the word “Minister” wherever it appears and substituting the word “Authority”;

- * By amending section 28B by deleting the word “he” wherever it appears and substituting the word “it” and by deleting the word “his” wherever it appears and substituting the word “its”.

**International Insurance Act
1988**

By amending section 2 by inserting between the terms “Auditor” and “captive insurance business” and their definition the following term and definition:

“Authority” means the Samoa International Finance Authority established under the Samoa International Finance Authority Act 2003”;

By amending the definition of the terms “approved securities” and “auditor” in section 2 by deleting the word “Minister” and substituting the word “Authority”;

By amending the definition of the term “captive insurance business” by deleting the word “Registrar” and substituting the word “Authority”;

By amending section 5(1) by deleting the word “Registrar” and substituting the word “Authority”

By amending section 5(1)(c) and (e) and 5(2) by inserting before the words “the Registrar” wherever it appears, the words “the Authority or”

By amending sections 6, 7, 9, 12, 17(3), 20(3), 22(4), 22(5), 27, 28, and 30 by deleting the word “Registrar” wherever it appears and substituting the word “Authority”;

By amending sections 3, 11, 13, 14, 23, 24, 25, 37 and 39 by deleting the word “Minister” wherever it appears and substituting the word “Authority”;

- * By amending sections 7, 9(2), 9(3), 11(1), 22(4), 25(1) and 37(1) by deleting the word “he” wherever it appears and substituting the word “it” and by deleting the word “his” wherever it appears and substituting the word “its”;

By amending sections 17(5)(a), 22(2), 24(1), 24(2), 24(3), 24(4), 24(7), 25(8) and 32(3)(a) by inserting before the words “the Registrar” the words “the Authority or”;

- * By amending sections 22(2), 24(1), and 24(3) by inserting after the words “him”, “himself” or “he” as the case may be where they appear, the words “or it”;
- * By amending section 24(4) by deleting the words “to him”;
- * By amending section 25(1) by deleting the word “he” and substituting the words “the Authority” and by amending section 25(6) by deleting the word “he” and substituting the word “it”;

By amending section 26(1) by inserting after the words “the Minister” the words “or the Authority” and by inserting after the word “he” the words “or it”;

By amending section 38 by inserting before the words “and the Registrar” the words “, the Authority” and by inserting before the words “or the Registrar” the words “, the Authority”;

By repealing section 43.

**International Partnership
and Limited Partnership Act
1998**

By amending section 2 by inserting before the term “Contribution” and its definition the following term and definition:

“Authority” means the Samoa International Finance Authority established under the Samoa International Finance Authority Act 2003”;

- * By amending section 32 by deleting the word “Minister” wherever it appears and substituting the word “Authority” and in subsection (1) by deleting the word “his” and substituting the word “its”;

By amending sections 35, 39, 40, by deleting the word “Minister” wherever it appears and substituting the word “Authority”;

- * By amending sections 32, 39 and 40 by deleting the word “his” wherever it appears and substituting the word “its” and by deleting the word “he” wherever it appears and substituting the word “it”;

By amending section 45 by inserting before the words “the Registrar or any person” the words “the Authority,” and by inserting before the words “or the Registrar” the words “, the Authority”;

By amending section 2 by inserting between the terms “articles” and “charge” and their definition the following term and definition:

“Authority” means the Samoa International Finance Authority established under the Samoa International Finance Authority Act 2003”;

By amending section 32 by inserting before the words “the Registrar or any person” the words “the Authority, and by inserting before the words “or the Registrar” the words “, the Authority”.

**Segregated Fund Inter-
national Companies Act
2000**