

Information Sheet

INTERNATIONAL COMPANIES ACT 1988

International Companies Incorporation

To incorporate an international company is relatively simple and only exceptionally will it take more than one day. There is no prescribed application form and no prior Government approval required. Application is made to the Registrar of International and Foreign Companies through a licensed trustee company, accompanied by the company's Memorandum and Articles of Association, the incorporation fee of US\$300.00 which is fixed and Notice of registered office. The Act provides as a Schedule standards forms of Memorandum and Articles of Association which can be adopted with or without variation. There need be only one subscriber and normally this would be a trustee company or a nominee company acting on behalf of the beneficial owner, whose name need not be disclosed.

Name

Name approvals must first be obtained from the Registry and a proposed company name can be reserved for up to 3 months. A Company can be registered with virtually any name in any language which includes a word (or words) which connotes the existence of a body corporate.

Memorandum and Articles of Association

These may expressly provide for their alteration by resolution of the directors in addition to the usual power of alteration by special resolution by the members.

Capital

There is no minimum capital requirement and shares may have a par value or may be of no-par value or a combination of both. They may be fractional and expressed

in the currencies of any country except Samoa in single or multiple currencies. Share warrants issued to bearer or bearer shares may be issued or exchanged for fully paid up shares. Details of allotments and redemptions of shares need not be filed with the Registrar. Subject to certain conditions, shares may be issued by way of gift and without consideration.

Subject to its articles, a company may provide financial assistance for the purchase or subscription of its own shares or the shares of any related company, provided the directors honestly believe that such purchase or subscription will not result in the company thereby being incapable of meeting its obligations to creditors as they fall due.

Changes in Shared Capital

The principal of capital maintenance is abolished in favour of a solvency test in regard to any distribution of capital or reduction of liability in respect of capital. The directors must have an honest belief that any such distribution or reduction will not result in the company being incapable of meeting its obligations to creditors as they fall due and must file a capital reduction notice with the Registrar.

Debentures

The Act provides for bearer debentures, the conversion of bearer debentures to registered debentures, perpetual debenture and for the reissue of redeemed debentures. Charges on a company's property may be registered with the Registrar within 42 days after their creation. If not so registered the charges are void against a liquidator and any creditor of the company. An international company (the chargor) may under certain circumstances create a valid charge over an asset (being a debt due or to become due to it by another, (the chargee) to secure a debt owing to the charge by a third party. (cf. the decision in *Re Charge Card Services Ltd. and Board v Commissioner of Stamp Duties*).

Directors

There need to be only one director. A trustee company, if requested, will make available an officer for appointment as a resident director, but it is not obligatory that any director be resident of Samoa. A director may be a company. Directors meetings need not be held in Samoa and written resolutions signed by all directors may be minutes in lieu of meetings. A company is not required to keep a register of its directors and secretaries unless it opts to do so.

Secretary/Resident Agent

A company must have a resident secretary or resident agent either of whom must be a registered trustee company, a wholly owned subsidiary thereof, or an officer of a registered trustee company. Where a company does not appoint a resident secretary, it must appoint a secretary in addition to the resident agent. The secretary fulfils the company's legal obligations and the resident agent is responsible for dealing with communications addressed to the company at its registered office. Additional non-resident secretaries may be appointed.

Registered Office

The registered office must be the office of a Trustee Company.

Common Seal

A director, (or if there are more than two directors), may execute deeds on behalf of the company and the affixing of the common seal is not required but is optional.

Post Incorporation Requirements

A certificate of incorporation remains valid until the company is struck off pursuant to the provisions of the International Companies Act 1987 and is subject to the payment of a renewal fee on the 30th November in each year following incorporation. After incorporation, the company's filing obligations are minimal. These mainly comprise notifying the Registrar of any changes which take place in the company's Memorandum and Articles of Association and in the registered office. Particulars of a company's officers are not required to be filed unless the company so elects and the company can also elect not to maintain a register of its directors and secretaries.

Annual General Meeting

An international company need not hold any particular AGM or any AGM if all the members entitled to attend the meeting agree in writing not to do so. However, if any member gives written notice that he requires future AGM's to be held, such meetings must be held and the first such meeting must be within 3 months of the receipt of the notice. No Annual Return is required to be lodged with the Registrar unless the company is a licensed bank or insurance company.

Accounts

When required by a member, a company must present to any meeting of the company a profit and loss account and balance sheet. There is however no

Requirement that these be filed with the Registrar. The company must keep and maintain such accounts and records as the company's directors consider are necessary or desirable in order to reflect the financial position of the company. They may be kept at the company's Registered Office or at such other place the directors think fit and are open to inspection at any time by any director.

Auditor

A company which does not hold a banking or insurance license does not need to appoint an auditor if its articles so provide, or all the members agree in writing or if all the members present in person or by proxy so resolve at each annual general meeting of the company. An auditor can be an individual, a firm or company but must be registered under the Act.

Restrictions

An international company is prohibited from investing in a domestic company and from acquiring assets from or carrying on business with or settling any property on someone ordinarily resident in Samoa or a domestic company. It also cannot make any disposition or settlement of property outside Samoa in the currency of Samoa nor can it send out of Samoa any money or securities belonging to or controlled by a resident or a domestic company. It may however make or maintain deposits with a company carrying on banking business in or from within Samoa and it may hold shares in other companies incorporated or registered under the Act.

Taxes and Duties

International and registered foreign companies are exempt from payment of all income taxes and from other direct or indirect taxes and stamp duties on their transactions, profits and gains and on any dividends, earnings or interest attribute to or paid upon their shares or securities which are beneficially owned by non-residents or other international companies.

Inward Company Redomiciliation

A company which is incorporated elsewhere and wishes to redomicile or transfer into Samoa may, if not prohibited under the laws of its home jurisdiction, apply to the Registrar for continuation in Samoa supported by such material as considered adequate and satisfactory by the Registrar.

Outward Company Redomiciliation

An international company incorporated under the Act may apply to the Registrar for

and Retention of Records

Any register, record, account or document required to be kept by the Registrar may be maintained in written, magnetic, electronic or any other data storage form provided a legible printed copy can be produced. Records of an international company struck off the Register will be retained by the Registrar for a period of seven years from the date the company was so struck off the Register.

Foreign Companies

A company incorporated outside Samoa which wishes to establish a permanent establishment or carry on business within Samoa and is not registered as an overseas domestic company, must register as a foreign company under Part X of the International Companies Act.

Registration

Application is made to the Registrar of International and Foreign Companies through a trustee company, accompanied by the registration fee and:-

A certified copy of its Certificate of Incorporation;

A certified copy of its constitution or Memorandum and Articles of Association;

A list of its directors and secretaries. If any directors are residents of Samoa, a memorandum stating what their powers are is also required;

A memorandum stating details of a trustee company which is authorised to accept service of process and notices on behalf of the company;

The address of the registered office in Samoa which must be the principal office of a trustee company;

A declaration setting out particulars of the company's capital.

Upon registration, the Registrar issues a Certificate of Registration which is valid for 12 months. It is renewed on payment of the annual renewal fee for further periods of 12 months.

After registration, a foreign company is required to lodge an Annual Return within three months after the date of its AGM for the year to which the Annual Return relates. It must also notify the Registrar within one month of changes in its name, constitution, capital, (or number of registered members if it does not have a capital) directors, registered office or in the powers of any local resident director.

A foreign company is not regarded as carrying on business in Samoa by reason only of it conducting within Samoa an unsolicited isolated transaction which is completed within 31 days, not being one of a number of similar transactions repeated more than twice.

Limited Life International Companies

The "limited life international company" (based on the Wyoming LLC legislation) was introduced by amendments to the International Companies Act in 1996.

Limited Life International Companies Incorporation/Registration

A trustee company may apply to incorporate or register by continuance a limited life international company by delivering to the Registrar an original and true copy of the Memorandum and Articles of Association together with the prescribed fee of US\$300.

Name

It must be registered with the words "Limited Life International Company" or its abbreviation "LLC", Ltd Life Co" or "Limited Life International Co".

Objects

In addition to powers granted under section 20 of the Act, a limited life international company can also have powers set out in Schedule 3.

Memorandum and Articles of Association

These must state besides other requirements the total amount of share capital and division into shares of a fixed amount, the period of the company's duration, and management details. The duration of the company shall be fifty years (from the date of incorporation) if not specified otherwise in the Memorandum and Articles of Association.

Capital

No share in a limited life international company shall be issued until the person

Subscribing for such share has paid the consideration due in respect of that share. Such consideration can be money, services rendered, personal property, an estate in real property, a promissory note, et cetera or any combination thereof.

Unless otherwise stated in the Operating Agreement a member of a limited life international company is prohibited from transferring or assigning any share of other interest in the company without written approval of all other members.

Management & Members

The management of a limited life international company is specifically vested in its members (although those members may appoint managers in contrast to the corporate concept of management by a centralized board of directors). There must be a minimum of 2 members whose names and addresses must be entered in the Register of Members.

Unless it is otherwise provided in the Operating Agreement members who are managers must own at all times during the existence of the company:

- i) An aggregate interest of not less than 1% in the income, gain, loss, deduction or credit; and
- ii) An aggregate interest of not less than 1% in the aggregate of the paid up capital.

Registered Office & Resident Agent

The address of the registered office (required to be the office of a trustee company) and the name and address of the resident agent must be specified in the Memorandum and Articles of Association.

The resident agent can be a trustee company, an officer or a trustee company or a wholly owned subsidiary of a trustee company.

The resident agent is to accept due process of service and is responsible for compliance with statutory obligations of the company.

Post Incorporation Requirements

The Certificate of Incorporation or continuation remains valid until the company is struck off pursuant to the provisions of the International Companies Act 1987 and is subject to payment of a renewal fee on 30th November every year.

Dissolution

A limited life international company shall be dissolved upon the occurrence of various events including the expiry of its duration and the unanimous written agreement of all members.

Upon the occurrence of any of the specified events, the liquidator if already named in the articles becomes appointed. If not, either the managers or an appointee as the official liquidator will commence his duties. Notice of its dissolution must be filed within 14 days of the occurrence of the event.

Companies Limited by Guarantee and Companies Limited both by Shares and Guarantee ('Hybrid Companies').

The "company limited by guarantee" and "company limited by both shares and guarantee" (also known as hybrid companies) were introduced by amendment to the International Companies Act in 1998.

Companies Limited by Guarantee

A company limited by guarantee is a company in which the liability of members is limited to the extent they respectively undertake to contribute to the assets of the company in the event of its being wound up.

Companies Limited both by Shares and Guarantee ('Hybrid Companies')

A hybrid company is simply a company limited by guarantee and having a share capital. i.e./It has members whose liability is limited by guarantee, and members whose liability is limited by shares. A shareholder is not required to be a guarantee member or vice versa. A guarantee member's liability is limited by the memorandum to the extent to which the member has undertaken to contribute in the event of the company being wound up. The shareholders liability is limited only to the extent of any amount unpaid on the shares each held by them.

Incorporation/Registration

A trustee company may apply to incorporate or register a company limited by guarantee or a company limited by both guarantee and shares.

Name

Name approvals must first be obtained from the Registry and a proposed company name can be reserved for up to 3 months.

Memorandum & Articles of Association

For the company limited by guarantee, these must state amongst other things the name of the company, and undertaking by the members regarding the amount to be contributed to the assets of the company in the event of winding up.

For the hybrid company, the Memorandum and Articles of Association must inter alia provide the undertaking of members to contribute to the assets of the companies in the event of winding up and also state the authorised capital. Forms of Memorandum and Articles of Association for companies limited by guarantee and hybrid companies are prescribed by regulation.

Post Incorporation Requirements

A Certificate of Incorporation remains valid until being struck off the Register and is subject to payment of a renewal fee payable on 30th November in each year following incorporation.

Change of Status

Unless otherwise provided in its memorandum, an international company (except a limited life international company) may change its status to a company limited by guarantee or to a hybrid company or vice versa provided the following requirements are met:-

- a) The proposed change has been authorised by a members' special resolution and is given effect to within six (6) months from the date of the special resolution; and
- b) A statutory declaration by the Directors is lodged with the Registrar stating –
 - i) the change of status will in their honest belief not result in the company being incapable of meeting its obligations to its creditors as they fall due; and
 - ii) The company has fully complied with the Act;
 - iii) The Memorandum and Articles will be amended within at least 3 days reflecting the new status
- c) Payment of the prescribed fee.

The change of status becomes effective on the day the company files a copy of the amended Memorandum and Articles and the Certificate of Change of Status issued by the Registrar is conclusive evidence that all requirements of the Act have been complied with.