

## PORTCULLIS TRUSTNET

### **PTN eUpdates – Keeping you informed (Issue 2- May08)**

#### **LEGISLATIVE CHANGES IN SAMOA**

1. THE SAMOA INTERNATIONAL COMPANIES AMENDMENT ACT 2008
2. THE SAMOA INTERNATIONAL MUTUAL FUNDS ACT 2008

#### **1. THE SAMOA INTERNATIONAL COMPANIES AMENDMENT ACT 2008**

The enactment of the Samoa International Companies Amendment Act 2008 (“the Amendment”) on 21 April 2008 introduced a number of changes to the Samoa International Companies Act 1987 (“the Act”). This article highlights the significant changes to the Act that are time sensitive for Samoa companies.

##### **A. Immobilization of Bearer Instruments**

Section 39 of the Act has been amended so that all bearer instruments (including bearer share certificates or bearer debentures) must now be physically lodged with the trustee company who provides the registered office for the company (“the Trustee Company”) and who upon receiving the bearer instrument will act as a custodian of the bearer instrument for the beneficial owner.

The beneficial owner is prohibited from transferring, disposing of, or in any way dealing with the beneficial interest in the bearer instrument without the prior approval of the Trustee Company.

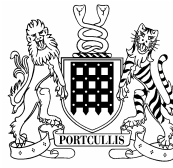
The Trustee Company is also prohibited from releasing the bearer instrument back to the beneficial owner or in any way parting with its possession.

For companies who currently have bearer instruments on issue a ‘transition period’ of 6 months from the Amendment’s date of enactment has been allowed to provide for companies to become compliant. Accordingly, companies have until the 21 October 2008 to ensure that all original bearer instruments are lodged with the Trustee Company.

The options for those current beneficial owners of bearer shares issued by Samoa companies are:

- I. Convert the issued bearer shares to registered shares, and have the shares registered in the name of the beneficial owner;

Please note that the information contained herein is not intended to be exhaustive with respect all issues or matters arising directly or indirectly out of the Samoa International Companies Amendment Act 2008, the International Companies Act 1987, the International mutual Funds Act 2008, or the law as it relates to Samoa. It is provided as a general guide or reference point and is in no way intended and should not be relied upon as legal advice.



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- II. Convert the issued bearer shares to registered shares, and utilizing nominee services provided by the Trustee Company, have the shares registered in the name of the nominee shareholder; or,
- III. Request the Trustee Company provide custodial services to the bearer share certificate.

Failure to comply with these immobilization provisions will result in all rights, powers and privileges attached to the bearer instruments becoming suspended and of no legal effect until such time that the company is compliant.

***(Please note that Portcullis TrustNet will be directly contacting all clients with Samoa companies registered through us that have issued bearer shares to further discuss the options available to them and any associated costs.)***

### **B. Register of Members**

Section 106 of the Act has now been amended so that the company's register of members, or at least a copy, must be kept at the company's registered office. Companies have until 21 October 2008 to ensure compliance with this section. Failure to do so is considered an offence against the Act, by not only the company, but also against each and every officer of the company and such an offence is subject to penalties.

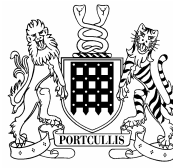
### **C. Registration of Charges**

Section 72 of the Act previously allowed "any relevant person" to file a charge for registration with the Registrar (either the instrument creating the charge or a statement of its particulars) without filing a copy of the same documents at the company's registered office.

The Amendment now requires that where a charge is registered against the company, the instrument or statement of particulars filed with the Registrar, must now also be filed with company's registered office within 7 days from such filing. Failure to file at both the Registry and the registered office will result in the charge being deemed legally void against any liquidator or creditor.

***For further discussion on any aspect of the Act and its impact on your company, please do not hesitate to contact your usual Portcullis TrustNet representative for assistance.***

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### **2. THE SAMOA INTERNATIONAL MUTUAL FUNDS ACT 2008**

On the 7<sup>th</sup> May 2008, Samoa passed the International Mutual Funds Act 2008 (“the Mutual Funds Act”). The Mutual Funds Act requires that:

1. No public, professional or private fund may carry on business in or from within Samoa without approval from the Samoa International Finance Authority (“SIFA”); and
2. Any person who acts or holds themselves out as carrying on business in or from Samoa as fund managers and/or fund administrators must be licensed by SIFA pursuant to the Mutual Funds Act.

All existing funds that are carrying on business in or from within Samoa have 9 months from the date of the Mutual Funds Act’s enactment to ensure that they are compliant with the Mutual Funds Act. Accordingly, SIFA approval must be obtained before the transitional period expires on **7 February 2009**.

For those persons who were at the date of the Mutual Funds Act's enactment performing the functions of a fund manager or administrator in or from within Samoa, a transition period of 3 months has been permitted to allow such persons to become licensed. Accordingly this transition period will end on **7 August 2008**.

Please note that failure to comply with the Mutual Funds Act carries penalties of imprisonment as well as monetary fines.

For further discussion on any aspect of the Mutual Funds Act and its impact on your fund business and activities, please do not hesitate to contact your usual Portcullis TrustNet representative for assistance.

***To find out more about this and other new developments,  
contact your Relationship Manager today!***

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