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THE COMPANIES ORDINANCE, 1920.

Western Samoa.

No. 5, 1920.



An Ordinance

made by the Administrator of the Territory of Western Samoa, with the advice and consent of the Legislative Council of that Territory and in pursuance of the Samoa Constitution Order 1920.

1. This Ordinance may be cited as the Companies Ordinance, 1920.
2. This Ordinance shall come into operation on the 13th day of August, 1920.
3. It is expressly declared that this Ordinance is made subject to the provisions of clause 61 (c) of the Samoa Constitution Order, 1920, and to the provisions of the Crown Estates Order, 1920.

FOREIGN COMPANIES.

4. In this Ordinance "foreign company" means any partnership, association, company or corporation incorporate outside Samoa.
5. (1) A foreign company may from time to time, by an instrument in writing under its common seal, or executed in such manner as to be binding on the company, empower any person either generally or in respect of any specified matters, as its attorney, to sue and be sued, or otherwise appear or be impleaded in any Court in any civil or criminal proceeding, or before any arbitrator or person having by law or consent of parties authority to take evidence, and generally on behalf of such company to do all acts and to execute any deeds or instruments within Samoa.  
(2) Where more than one person is appointed
  - (a) The appointment may be joint or joint and several; and
  - (b) The powers and authorities conferred on such persons may be in respect of the same or separate matters.
6. Every act done or purporting to be done, and every deed or instrument executed or signed by such attorney on behalf of the foreign company by whom he is appointed shall bind the company in the same way and to the same extent and have the same force and effect in every respect as if such act had been done by the company, and as if such deed or instrument had been duly sealed with the common seal of the company or otherwise executed or signed in such manner as to bind the company.

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7. (1) Before any foreign company commences business in Samoa the attorney so appointed shall deposit in the office of the High Court a certified copy of the original power of attorney under which he claims to represent such company, together with a certified copy of the certificate or other evidence of the incorporation of such company.

(2) It shall be the duty of the Registrar of the Court to ascertain that such copies so deposited are true copies of the original instruments; and such copies shall be open to the inspection of the public on payment of a fee of one shilling.

8. Every foreign company shall have an officer or place of business in Samoa where legal process of any kind may be served upon it, and notices of any kind may be addressed or delivered; and for the purpose of this Ordinance the following provisions shall apply:—

(a) Before any foreign company commences or carries on business in Samoa the attorney of every such company shall cause a notice to be inserted in at least one issue of the Western Samoa Gazette stating the situation of such office or place of business:

(b) If any change is made in the situation of such office or place of business the attorney shall cause a like notice of such change to be given in the manner hereinbefore provided:

(c) Service of legal process or the delivery of any notice at any such office or place of business shall for all purposes be deemed good service on the company; but nothing herein shall be deemed to control or affect any statute or rule now or hereafter in force regulating the service of legal process upon any person or corporate body according to the practice of the Court whence such process issues.

(d) Every attorney of a foreign company who fails to comply with any of the foregoing provisions is liable to a fine of five pounds for every day during which the business of such company is carried on contrary to this Ordinance.

9. A declaration endorsed upon or annexed to any instrument appointing or purporting to appoint an attorney as hereinbefore mentioned, made or purporting to be made by one of the directors or by the general or business manager of the foreign company so appointing an attorney, before a Mayor, Provost, Notary Public, British Consul or Vice-Consul, or other person authorised to take such declaration, to the effect that—

(a) The company is incorporated under the style mentioned in the instrument, in accordance with the law of the country, where it is so incorporated (naming such country); and

(b) The declarant is a director or general or business manager; and (if the company has a common seal)

(c) The seal affixed thereto is the common seal of the company, and that the seal has been affixed, and the instrument executed, and the powers and authorities purporting to be conferred upon the attorney are authorised to be conferred under the constitution of the company, or in pursuance of the Act or instrument under which the company is incorporated, or by the regulations for the time being thereof,—

shall be conclusive evidence of the facts set forth therein.

10. Every power of attorney purporting to be granted by any foreign company as hereinbefore mentioned shall, as between the company, its successors and assigns, on the one hand, and the persons dealing with the attorney of such company and all parties claiming through or under such persons, on the other hand, continue in force (notwithstanding that such power has been revoked, or the company wound up or

dissolved) until the attorney of the company, or all and every of the attorneys, if more than one, to whom such power is given have received notice or information of such revocation, winding-up, or dissolution.

11. (1) A statutory declaration by the attorney of any foreign company that he has not received any notice or information of the revocation of the power of attorney or of the winding up or dissolution of the company, shall be taken to be conclusive proof that no such revocation, winding up or dissolution has taken place.

(2) When there are more attorneys than one, such declaration may be made by any one of the attorneys.

12. (1) Before any foreign company voluntarily ceases to carry on business in Samoa at least three months' notice shall be given by its attorney of its intention so to do, by publication of such notice in the Western Samoa Gazette.

(2) For a period of three months after the gazetting of such notice legal process and another documents may be served on the attorney of the company under this Ordinance, or, if there is no such attorney, then by leaving the same at any office or place of business where the company carried on business prior to the giving of the notice aforesaid, and such service shall be as effectual as if the notice aforesaid had not been given.

#### WINDING-UP OF FOREIGN COMPANIES.

13. Any foreign company may be wound up under this Ordinance—

(a) Where it is proved to the satisfaction of the High Court that the company is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding-up its affairs:

(b) Where it is proved to the satisfaction of the High Court that the company is unable to pay its debts:

(c) Where the High Court is of opinion that it is just and equitable that the Company should be wound up.

14. A liquidator of a foreign company in course of being wound up may exercise all or any of the powers conferred on a foreign company by this Ordinance.

15. No person dealing bona fide with the liquidator of a foreign company now or hereafter being wound up, whether in or out of Samoa, shall be affected by any irregularity in or about the winding-up of such company, or the appointment of such liquidator.

16. The High Court may at any time after the filing of a motion for winding up a foreign company, and before making an order winding up the company, upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any action or other proceeding against the company upon such terms as the High Court thinks fit.

17. Where an order is made for winding up a foreign company, no action or other proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt due by the company except with the leave of the High Court, and subject to such terms as the High Court imposes.

18. Any application to the High Court for the winding up a foreign company shall be by motion filed by the company or by one or more creditors of the company together or separately, and every order made on any such motion shall operate in favour of all the creditors of the company.

19. A winding up of a foreign company by the High Court shall be deemed to commence at the time of the filing of the motion for the winding up.

20. The High Court may at any time after the filing of the motion for winding up a foreign company appoint a provisional liquidator of the assets of the company, and may limit and restrict his powers by the order appointing him, or by any subsequent order.

21. (1) Upon hearing the motion the High Court may either grant the same and appoint a liquidator of the assets of the company, or may dismiss the same with or without costs, or adjourn the hearing conditionally or unconditionally, and make any interim order or any other order that it deems just.

(2) A copy of every such order shall forthwith be filed with the records relating to the company and a minute thereof shall be made in his books relating to the company by the proper officer of the High Court.

22. The High Court may at any time after an order has been made for winding up a foreign company, upon the application by motion of the liquidator or of any creditor or contributory of the company, and upon proof to the satisfaction of the High Court that all proceedings in relation to such winding up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

23. The High Court may, as to all matters relating to the winding up, have regard to the wishes of the creditors as proved to it by any sufficient evidence, and may direct meetings of the creditors to be summoned, held, and conducted in such manner as it thinks fit for the purpose of ascertaining their wishes, and may appoint a person to act as chairman at any such meeting, and to report the result of such meeting to the High Court.

24. The High Court may on the application of any creditor or contributory of the company appoint any number of fit persons (not exceeding three) to be supervisors for the purpose of assisting and advising the liquidator in the winding-up of the company.

25. Any supervisor may resign by notice in writing to the liquidator, or may be removed by the High Court on the application of the liquidator or of any creditor on due cause shown, and any vacancy occasioned thereby or by the death of a supervisor may be filled by the High Court.

26. The liquidator shall have regard to the views and advice of the supervisors; and if any question or difference arises between him and them or any of them, the High Court, on the application of the liquidator or of any supervisor, may give directions in the matter.

27. With the consent of the supervisors (if any) the liquidator may from time to time employ a solicitor or agent to assist him in the performance of his duties.

28. (1) The liquidator and such supervisor shall be entitled to such remuneration out of the assets of the company as is fixed by the High Court.

(2) Such remuneration shall be a first charge upon the assets of the company.

29. The liquidator shall be described by the style of the liquidator of the particular company in respect of which he is appointed, and not by his individual name; he shall take into his custody or under his control all the property, effects, and things in action to which the company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as are imposed by the High Court.

30. The liquidator shall have power with the sanction of High Court to do the following things:—

(a) Bring or defend any action, prosecution, or other proceeding, civil or criminal, in the name and on behalf of the company:

(b) Carry on the business of the company so far as is necessary for the beneficial winding up of the same:

(c) Sell the real and personal property, effects and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels:

(d) Do all acts and execute in the name and on behalf of the company all deeds, receipts, and other documents:

(e) Draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company; and the drawing, accepting, making, or indorsing of every such bill of exchange or promissory note on behalf of the company shall render the company liable thereon in like manner as if such bill or note had been drawn, accepted, made, or indorsed by or on behalf of such company in the course of carrying on the business thereof:

(f) Raise from time to time, on the security of the assets of the company any requisite sum or sums of money:

(g) Do and execute all other things necessary for winding up the affairs of the company and distributing its assets.

31. The High Court may provide by any order that the liquidator may exercise any of the above powers without the sanction or intervention of the Court.

32. The High Court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefits of any distribution made before such debt or claim is proved.

33. The High Court shall distribute any surplus that may remain amongst the parties entitled thereto.

34. The High Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the cost, charges, and expenses incurred in the winding up in such order of priority as the Court thinks just.

35. (1) The High Court may, after it has made an order for winding up a foreign company, summon before it any officer of the company or any person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade dealings, estate, or effects of the company; and the Court may require any such officer or person to produce any books, papers, deeds, writings, or other documents relating to the company in his custody or power.

(2) If any person so summoned refuses to come before the High Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause such person to be apprehended and brought before it for examination.

(3) Where any person claims any lien on papers, deeds, or writings, or documents produced by him, such production shall be without prejudice to such lien, and the High Court shall have jurisdiction in the winding up to determine all questions relating to such lien.

36. The High Court may examine on oath, either by word of mouth or upon written interrogatories, any person appearing or brought before it in manner aforesaid, concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person and require him to subscribe the same.

37. Where, on the winding up of a foreign company, the assets of the company may prove to be insufficient for the payment of its debts and liabilities and the cost of winding up, the same rules shall prevail and be observed as to the respective

rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and of future and contingent liabilities respectively, as are in force under the law of bankruptcy with respect to estates of persons adjudged bankrupt; and all persons who under such law would be entitled to prove for and receive dividends out of the assets of such company may come in under the winding-up and prove their claims accordingly.

38. (1) Any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property as would, if made or done by or against any person, be deemed, in the event of his bankruptcy, to have been made or done by way of undue or fraudulent preference of the creditors of such person shall, if made or done by or against any foreign company, be deemed, in the event of such company being wound up, to be made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly.

(2) For the purposes of this clause the filing of a motion for winding up a company shall be deemed to correspond with the act of bankruptcy in the case of any such person as aforesaid; and any conveyance or assignment made by any foreign company of all its estate and effects to trustees for the benefit of all its creditors shall be void not only as against the creditors of the company and the liquidator, but also as between the parties thereto.

39. Where a foreign company is being wound up, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency, or sound only in damages, or for some other reason do not bear an ascertained value.

40. (1) In the distribution of the assets of a foreign company being wound up there shall be paid, in priority to other debts,—

(a) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the commencement of the winding up not exceeding £50; and

(b) All wages of any labourer or workman in respect of services rendered to the company during two months before the commencement of the winding-up.

(2) The foregoing debts shall rank equally one with another, and shall be paid in full, unless the assets of the company are insufficient to meet them, in which case they shall abate in equal proportions.

(3) Subject to the retention of such sums as are necessary for the costs of administration or otherwise, the liquidator shall discharge the foregoing debts forthwith, so far as the assets of the company are sufficient to meet them, as and when such assets come into his hands.

41. Where any foreign company is being wound up all books, accounts, and documents of the company and of the liquidator shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

42. Where a foreign company has been wound up, the books, accounts, and documents of the company and of the liquidator may be disposed of in such manner as the High Court directs; but after the lapse of five years from the date of the completion of such winding up no responsibility shall rest on the company, or the liquidator, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them cannot be produced to any party or parties claiming to be interested therein.

43. Where an order is made for winding up a foreign company, the High Court may make such order as it thinks fit for the inspection of the company's books and papers by the creditors or contributories, and any books and papers in the possession of the company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise.

44. Every director, officer, or contributory of any foreign company, wound up under this Ordinance who destroys, mutilates, alters or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company, with intent to defraud or deceive any person, is liable to two years' imprisonment with hard labour.

45. Where in the course of winding up of a foreign company, it appears that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in the winding-up, or of its own motion, direct the liquidator to prosecute any such person, and may order the costs and expenses of such prosecution to be paid out of the assets of the company.

46. The liquidator may, with the sanction of the court,—

(a) Pay any class of creditors in full, or make such compromise or other arrangement as he deems expedient with the creditors or persons claiming to be creditors or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable; or

(b) Compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims whether present of future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms as are agreed on, with power to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

#### SAMOAN INTERESTS IN COMPANIES.

47. (1) It shall not be lawful for any Samoan to be or become a partner, contributory, shareholder, or subscriber in or to any partnership, association, company, or corporation now or hereafter formed or incorporated in or outside of Samoa for the purpose of carrying on any trade or business in Samoa.

(2) Any Samoan committing any offence against this clause shall be liable to a fine not exceeding five pounds in addition to the nominal value of his contribution, share, or subscription.

48. Any monies paid, or the value of any goods supplied, by a Samoan to, or to any person on behalf of, any such partnership, association, company, or corporation, in respect of any contribution, share, or interest of such Samoan in any such partnership, association, company, or corporation, shall be recoverable by the Crown

as a debt due and owing by such partnership, association, company, or corporation, or such person to such Samoan.

49. The Administrator may suspend or cancel the license for trading issued to any partnership, association, company, or corporation which, by an accredited agent thereof, solicits any Samoan to become a contributor, shareholder, or subscriber therein or thereto, or accepts any Samoan as a contributor, shareholder, or subscriber therein or thereto.

Assented to this 13th day of August, 1920.

[L.S.]

R. W. TATE,  
Administrator.