

CENTRAL BANK OF SAMOA BILL 2015

SAMOA

Explanatory Memorandum

Introduction

The objectives of the Bill are:

- (a) to continue the establishment of the Central Bank of Samoa (“Bank”) and provide for its administration, functions, duties and powers;
- (b) to provide for authorised capital of the Bank, the General Reserve Account, distributable profit and annual budgets;
- (c) to empower the Bank to issue currencies in Samoa;
- (d) to provide for international reserves and foreign exchange;
- (e) to regulate monetary and financial stability;
- (f) to provide its relationship with the Government;
- (g) to provide auditing of the Bank’s operations; and
- (h) to repeal the Central Bank of Samoa Act 1984, the Banking Ordinance 1960 and the Monetary Board of Samoa Act 1974.

Clauses:

PART 1 PRELIMINARY

Clause 1: - states that, when enacted, the Bill will be called the Central Bank of Samoa Act 2015 (“Act”), and will commence on the date of assent by the Head of State.

Clause 2: - provides for definitions of terms.

PART 2 ESTABLISHMENT AND ADMINISTRATION

Division 1 - Central Bank of Samoa

- Clause 3:** - provides for the continued establishment of the Bank as a body corporate.
- Clause 4:** - provides that the Bank is autonomous and accountable when carrying out its functions, duties and powers under the Act.
- Clause 5:** - provides for the objectives of the Bank. Its primary objective is to implement monetary policy for the purpose of maintaining stability in the general level of price.
- Clause 6:** - provides for the functions of the Bank.
- Clause 7:** - provides for the establishment of the Bank's principal place of business, branches and appointments of its agents and correspondents in Samoa and abroad.

*Division 2 - Establishment of Board
and Executive Committee*

- Clause 8:** - establishes the Board of Directors consisting of the Governor and four (4) other members.
- Clause 9:** - provides for the declaration of pecuniary interests and convictions by a director.
- Clause 10:** - provides for the requirements of meetings of the Board.
- Clause 11:** - provides that the Chief Executive Officer or any other officer of the Ministry of Finance may participate, but has no right to vote, in any meetings of the Board.
- Clause 12:** - establishes the Executive Committee comprising the Governor and three (3) executive officers.

*Division 3 - Duties and powers of the Board,
Executive Committee and Governor*

- Clause 13:** - provides for the duties of the Board to supervise implementation of its policies, administration and operations of the Bank and the powers of the Board to supervise Bank's functions to decide borrowings, to make appointments, etc.
- Clause 14:** - provides for the duties and powers of the Executive Committee, including the duty to formulate the policies of the Bank and to advise Government on exchange rate regime.

- Clause 15:** - provides for the duties of the Governor who is to be also the Chief Executive Officer of the Bank and be responsible for the day-to-day administration of the Bank, making proposals to the Board, reporting to the Board, etc.

*Division 4 - Appointments of Governor
and Non-Executive Directors*

- Clause 16:** - empowers the Head of State to appoint the Governor and non-executive directors.
- Clause 17:** - provides for the appointment panel for the Governor.
- Clause 18:** - provides for the appointment panel for non-executive directors.
- Clause 19:** - provides for the terms of appointment and remuneration of the Governor and the remuneration of a non-executive director.
- Clause 20:** - provides for the disqualification and removal of a relevant person (i.e. the Governor and the directors).
- Clause 21:** - provides for the process of resignation of a relevant person.
- Clause 22:** - empowers the Head of State to remove the Governor from office.
- Clause 23:** - empowers the Head of State to remove a director from office.
- Clause 24:** - treats a vacancy in an office of a relevant person as an extraordinary vacancy to be filled within two (2) months.

Division 5 - Officers, Auditor and Audit Committee

- Clause 25:** - empowers the Governor to appoint officers and employees of the Bank.
- Clause 26:** - empowers the Board to appoint an Internal Auditor of the Bank.
- Clause 27:** - empowers the Board to appoint a 3-member Audit Committee and provides for its functions.

Division 6 - Miscellaneous

- Clause 28:** - provides for the disclosure of interests of any member or officer which is likely to give rise to any conflict of interest, or which will affect his or her performance in office, and prohibits any member or officer from accepting any gift or advantages.

- Clause 29:** - prohibits a member or officer from using confidential information of the Bank to carry out private financial transactions for himself or herself or as an agent of another person.
- Clause 30:** - prohibits a member or officer from disclosing confidential information acquired during his or her performance to any other person unless the disclosure is subject to certain specified circumstances.
- Clause 31:** - protects any member or an officer, agent or correspondent of the Bank from liability unless the act or omission constitutes intentional wrongful conduct or gross neglect.

PART 3 CAPITAL, RESERVES, PROFITS AND BUDGET

- Clause 32:** - provides for the authorised capital of the Bank which is \$20 million at the commencement of the Act.
- Clause 33:** - establishes a General Reserve Account and an Unrealised Revaluation Reserve Account for the Bank.
- Clause 34:** - provides for the net profits of the Bank to be determined under the International Financial Reporting Standards.
- Clause 35:** - provides for distributable profit and the basis for its computation.
- Clause 36:** - obligates the Bank to allocate to the General Reserve Account the net and distributable profits.
- Clause 37:** - empowers the Board to approve the annual budget of the Bank.

PART 4 CURRENCY

- Clause 38:** - provides for the sole right of the Bank to issue currency in Samoa.
- Clause 39:** - prohibits any person from damaging any currency without the authority of the Bank.
- Clause 40:** - provides for the Tala as the currency unit of Samoa and that the currency issued by the Bank is legal tender in Samoa.
- Clause 41:** - provides for the Bank to arrange for printing of currency and provides for the characteristics of currency issued by the Bank.

- Clause 42:** - empowers the Bank to recall currency from circulation in Samoa.
- Clause 43:** - provides that any person is not entitled to recover the value of any lost or stolen currency from the Bank, and provides that any mutilated or otherwise damaged currency exchanged or refunded must be determined by the Bank.
- Clause 44:** - obligates the Bank to assist in the enforcement of any law related to the counterfeiting of currency in Samoa.

**PART 5
INTERNATIONAL RESERVES
AND FOREIGN EXCHANGE**

- Clause 45:** - obligates the Bank to maintain and manage all official international reserves of Samoa. This provision also provides for the Bank to endeavour to maintain official international reserve in Samoa.
- Clause 46:** - empowers the Bank to buy, sell, or deal in gold, foreign currencies, treasury bills, etc.
- Clause 47:** - limits the institutions, including governments, which the Bank deals with.
- Clause 48:** - empowers the Minister to determine the exchange rate regime and obligates the Bank to determine the exchange rate policy.
- Clause 49:** - obligates the Bank to carry out the power of exchange control as provided by regulations for exchange control.

**PART 6
MONETARY AND FINANCIAL STABILITY**

- Clause 50:** - empowers the Bank to determine, open accounts for and accept deposits from Government, etc.
- Clause 51:** - empowers the Bank to issue bank drafts and deal with bills of exchange, government treasury bills etc.
- Clause 52:** - obligates the Board to determine the terms and conditions of collateral and rates to be used for operations under clause 51.
- Clause 53:** - empowers the Bank to maintain minimum reserves.
- Clause 54:** - empowers the Board to decide other operational methods for money control.

- Clause 55:** - empowers the Bank to require financial institutions, security dealers and brokers, etc to comply with rate of interest, etc.
- Clause 56:** - obligates financial institutions, banks, brokers and insurers to supply information to the Bank.
- Clause 57:** - empowers the Bank to grant financial assistance to another bank, as well as measures to be taken by the Bank if a bank receiving the financial assistance has not achieved the results intended.
- Clause 58:** - obligates the Bank to regulate, payment and settlement systems, including the National Payment System Act 2014.

PART 7 RELATIONS WITH THE GOVERNMENT

- Clause 59:** - obligates the Bank to act as a fiscal agent of the Government and may act as such for state-owned entity.
- Clause 60:** - provides for the powers and duties of the Bank and the Government to deal with and advise or inform each other.
- Clause 61:** - empowers the Bank to grant credits to the Government.
- Clause 62:** - prohibits the Bank from granting loans, advances or credits to state-owned entities, unless the Government guarantees the loans, advances or credit. This clause does not apply to a state-owned entity that is a bank.
- Clause 63:** - prohibits the Bank from acquiring negotiable instruments issued by the Government and state-owned entities unless the instruments are negotiable.
- Clause 64:** - provides a ceiling on credits provided to the Government and state-owned entities.
- Clause 65:** - prohibits the Bank from granting credits to the Government or state-owned entity except as provided in the Bill.

PART 8 AUDIT AND ACCOUNTABILITY

- Clause 66:** - provides for the duties and appointment of an external auditor to audit financial statements and bank accounts of the Bank annually.

- Clause 67:** - obligates the Bank to prepare reports and financial statements to submit to the Minister for tabling in the Legislative Assembly, and to be published in the Savali.

PART 9 MISCELLANEOUS

- Clause 68:** - empowers the Bank to prosecute any offence committed under the Acts specified in that clause.
- Clause 69:** - obligates the Bank to collect, publish and disseminate statistics for the purposes of its objectives.
- Clause 70:** - empowers the Bank to provide custodial facilities determined by the Board to any person for the storage of currencies, securities, precious metals and other valuable assets.
- Clause 71:** - empowers the Bank to determine fees to carry out its functions.
- Clause 72:** - provides for the cooperation between the Bank and inter-agency and international cooperation for the purpose of the Bank's objectives and functions.
- Clause 73:** - exempts the Bank's from tax and customs and excise duties.
- Clause 74:** - sets out prohibited activities that the Bank cannot engage in.
- Clause 75:** - empowers the Bank to provide advance to its officers.
- Clause 76:** - provides for the jurisdiction of the courts in dealings with proceedings against the Bank.
- Clause 77:** - provides for the Bank's preferential right to satisfy its claims from cash balances, securities and other assets of the debtor.
- Clause 78:** - provides immunity for the Bank from prejudgment attachment.
- Clause 79:** - provides that any other bank cannot be licensed in Samoa under any prohibited names specified in that clause except with the written approval of the Bank.
- Clause 80:** - empowers the Head of State to make regulations.
- Clause 81:** - repeals the Banking Ordinance 1960 and the Central Bank of Samoa Act 1984 and amends the Financial Institutions Act 1996.

Clause 82: - provides for transitional and saving provisions for existing subsidiary legislation, assets and liabilities, currency, contracts and officers and directors, etc.

A handwritten signature in black ink, appearing to read 'Tuilaepa', is written over a horizontal dotted line. The signature is fluid and cursive.

(Hon TUILAEPA Fatialofa Lúpesoliai
Aiono Neioti Sailele Malielegaoi)

PRIME MINISTER AND MINISTER FOR FINANCE

CENTRAL BANK OF SAMOA BILL 2015

SAMOA

Arrangement of Provisions

PART 1 PRELIMINARY

1. Short title and commencement
2. Interpretation

PART 2 ESTABLISHMENT AND ADMINISTRATION

Division 1 - Central Bank of Samoa

3. Continued establishment of the Bank
4. Autonomy
5. Objectives of the Bank
6. Functions of the Bank
7. Offices, branches, agents and correspondents

Division 2 - Establishment of Board and Executive Committee

8. Board of Directors
9. Declaration of pecuniary interests and convictions
10. Meetings of the Board
11. Standing invitation
12. Executive Committee

Division 3 - Duties and powers of the Board, Executive Committee and Governor

13. Duties and powers of Board
14. Duties and powers of Executive Committee
15. Duties of the Governor

Division 4 - Appointments of Governor and Non-Executive Directors

16. Appointments of Governor and non-executive directors

17. Appointment panel for Governor
18. Appointment panel for non-executive directors
19. Terms of appointment and remuneration
20. Disqualifications
21. Resignation
22. Removal of Governor
23. Removal and vacancies of non-executive directors
24. Extraordinary vacancy in office

*Division 5 - Officers, Auditor
and Audit Committee*

25. Officers and employees of the Bank
26. Internal Auditor
27. Audit Committee

Division 6 - Miscellaneous

28. Conflict of interest and gifts
29. Confidential information
30. Secrecy
31. Legal protection and indemnification

**PART 3
CAPITAL, RESERVES, PROFITS, AND BUDGET**

32. Capital
33. Reserve accounts
34. Net profits
35. Distributable profits
36. Allocation of distributable profits
37. Budgets

**PART 4
CURRENCY**

38. Sole right to issue currency
39. Defacement of notes
40. Currency unit and legal tender
41. Manufacture and characteristics of currency
42. Power to recall
43. Recovery of lost, stolen, mutilated, or damaged currency
44. Counterfeit currency

**PART 5
INTERNATIONAL RESERVES
AND FOREIGN EXCHANGE**

45. Official international reserves
46. Operations in reserve assets

- 47. Limitations
- 48. Exchange rate regime and policy
- 49. Exchange control regulations

PART 6
MONETARY AND FINANCIAL STABILITY

- 50. Opening accounts
- 51. Monetary operations
- 52. Determination of collateral and rates
- 53. Minimum reserves
- 54. Other instruments of monetary control
- 55. Interest and credit
- 56. Supply of information
- 57. Lender of last resort
- 58. National Payment System

PART 7
RELATIONS WITH THE GOVERNMENT

- 59. Bank to be fiscal agent of Government
- 60. Cooperation with the Government
- 61. Credits to Government
- 62. Credits to state-owned entities
- 63. Acquisition of debt instruments issued by Government and state-owned entities
- 64. Ceiling on credits to Government and state-owned entities
- 65. Limitations

PART 8
AUDIT AND ACCOUTABILITY

- 66. External audit
- 67. Preparation of reports and financial statements

PART 9
MISCELLANEOUS

- 68. Power to prosecute
- 69. Collection and dissemination of statistics
- 70. Custodial facilities
- 71. Fees
- 72. Inter-agency and international cooperation
- 73. Exemption from taxation
- 74. Prohibited activities
- 75. Advances to officers
- 76. Court proceedings
- 77. Preferential right
- 78. Immunity from prejudgment attachment
- 79. Prohibited names

- 80. Regulations
- 81. Repeals and amendment
- 82. Transitional and saving provisions

2015, No.

A BILL INTITULED

AN ACT to provide for the establishment of the Central Bank of Samoa and for related purposes.

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

**PART 1
PRELIMINARY**

1. Short title and commencement - This Act may be cited as the Central Bank of Samoa Act 2015, and commences on the date of assent by the Head of State.

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

“audit committee” means the committee appointed under section 27;

“Bank” means the Central Bank of Samoa continued under section 3(1);

“Board” means the Board of Directors of the Bank established by section 8;

“Chairperson” means the Chairperson of the Board;

“currency” means bank note or currency note or coin other than commemorative coin;

“Executive Committee” means the Executive Committee of the Bank established by section 12;

“external auditor” means a person appointed under section 66;

“financial sector” means the financial service providers or the banking sector in Samoa;

“financial year” means the period of 12 months ending on 30 June each year, or any other period determined by the Board;

“Governor” means the person appointed under section 16 as the Governor of the Bank;

“International Financial Reporting Standards” means any current International Financial Reporting Standards issued by the International Accounting Standards Board;

“International Standards on Auditing” means any current International Standards on Auditing issued by the International Federation of Accountants;

“insurer” has the meaning in the Insurance Act 2007;

“Minister” means the Minister responsible for Finance;

“monetary liabilities” means currency in circulation, debt securities issued by the Bank, and deposits placed with the Bank by persons other than the Government and non-residents;

“non-executive director” means a director of the Board appointed under section 8(1)(b);

“objectives” means the objectives of the Bank set out in section 5;

“officer” includes the Governor or an employee of the Bank;

“state-owned entity” means a corporation or entity, a majority of shares of which are owned by the State, or the management of which is controlled by the State.

(2) In this Act, the definitions of “bank”, “credit institution”, “financial institution”, “financial services”, “securities broker”, and “securities dealer” have the same meanings as in the Financial Institutions Act 1996.

(3) In this Act, the definitions of “clearing system”, “National Payment System”, “payment system”, and “settlement system” have the same meanings in the National Payment System Act 2014.

PART 2 ESTABLISHMENT AND ADMINISTRATION

Division 1 - Central Bank of Samoa

3. Continued establishment of the Bank-(1) The Central Bank of Samoa established under the Central Bank of Samoa Act 1984 continues and operates pursuant to this Act.

(2) The Bank is a body corporate with perpetual succession and a common seal, and as such may:

- (a) enter into contracts, issuing obligations;
- (b) sue and be sued in its own name;
- (c) subject to the provision of this Act, acquire, hold, pledge, mortgage, and dispose of real and personal property; and
- (d) do all things and make expenditures necessary for the proper discharge of its functions.

4. Autonomy-(1) When carrying out its objectives, functions, duties and powers, the Bank is autonomous and accountable as provided under this Act.

(2) The Bank, a member of the Board or the Executive Committee or an officer, when carrying out their functions, duties and powers, must not take instructions from any other person, including a government entity.

(3) The autonomy of the Bank must be respected at all times.

(4) A person must not:

- (a) influence a member of the Board or the Executive Committee or an officer or employees of the Bank when carrying out their functions, duties or powers; or
- (b) interfere in the activities of the Bank.

5. Objectives of the Bank - The Bank has the following objectives:

- (a) the primary objective to formulate and implement monetary policy directed to the economic objective of achieving and maintaining domestic stability in the general level of prices;
- (b) the secondary objective to foster and maintain a stable financial system without affecting attainment of the primary objective;
- (c) the third objective to support the general economic policies of the Government without affecting the primary and secondary objectives.

6. Functions of the Bank - The Bank has the following functions:

- (a) to determine and implement monetary policy;
- (b) to advise the Government in respect of the exchange rate regime;
- (c) to determine and implement the exchange rate policy;
- (d) to hold and manage all official international reserves of Samoa;
- (e) to regulate the international exchange of money;
- (f) to issue and manage the currency of Samoa;
- (g) to oversee the maintenance of the stability of the financial system as a whole;
- (h) to license and supervise banks, securities brokers, securities dealers, other financial institutions, insurers, and any other entities in accordance with their relevant laws;
- (i) to act as a lender of last resort for banks;
- (j) to promote and oversee the safety and efficiency of the National Payment System;
- (k) to promote financial inclusion and financial literacy;
- (l) to collect and compile statistics related to its functions;

- (m) to act as a fiscal agent of the Government and state-owned entities;
- (n) to advise the Government on banking and monetary matters;
- (o) to cooperate with, and participate in, public international financial institutions and other international organisations, and cooperate with domestic and foreign public entities, concerning matters related to its objectives and functions;
- (p) to carry out any ancillary activities incidental to its functions, duties and powers.

7. Offices, branches, agents and correspondents - The Bank:

- (a) must have its principal place of business in Apia;
- (b) may establish branches and appoint agents and correspondents within Samoa and abroad; and
- (c) may require an agent within Samoa to maintain cash holdings in excess of the reserves mentioned under section 53.

*Division 2 - Establishment of Board
and Executive Committee*

8. Board of Directors - The Board of Directors of the Bank is established comprising the following members:

- (a) the Governor, as Chairperson;
- (b) four (4) non-executive directors appointed from the private sector.

9. Declaration of pecuniary interests and convictions-(1) A director must, in a form approved by the Governor, provide a declaration of pecuniary interests and convictions, within one (1) month:

- (a) of appointment; and
- (b) when there is a change in the interest or a new conviction.

(2) A non-executive director who fails to comply with subsection (1) ceases to be a director after the expiry of one (1) month.

(3) If the Governor fails to comply with subsection (1), failure is a ground for removal under section 22.

10. Meetings of the Board-(1) The following applies to a meeting of the Board:

- (a) the Board must -
 - (i) meet at any times and places, as the Board determines or as directed by the Governor; and
 - (ii) meet at least once in every two (2) months;
- and

(iii) meet, if a meeting is determined by the Governor to be necessary or requested in writing by at least two (2) directors;

- (b) three (3) members, of whom one (1) must be the Governor, form a quorum;
 - (c) the Governor must preside at every meeting;
 - (d) any question arising at a meeting must be decided by a majority of the votes of the members present and voting, except as otherwise provided under this Act;
 - (e) the Governor has a deliberative vote and a casting vote;
 - (f) the minutes of the Board must be recorded and signed by the Governor presiding at the meeting.
- (2) Subject to the provisions of this Act, the Board may regulate its own procedure.
- (3) No act or proceeding of the Board must be invalidated merely by reason of the existence of a vacancy on the Board.

11. Standing invitation - The Chief Executive Officer of or any other officer of the Ministry of Finance may participate, without having the right to vote, in any meetings of the Board, and submit a motion for deliberation to the Board.

12. Executive Committee - The Executive Committee of the Bank is established comprising the following members:

- (a) the Governor, as Chairperson; and
- (b) three (3) executive officers appointed by the Governor.

*Division 3 - Duties and powers of the Board,
Executive Committee and Governor*

13. Duties and powers of Board-(1) The Board must supervise the implementation of policies of the Bank and its administration and operations.

(2) In carrying out its duty under subsection (1), the Board has the following powers:

- (a) to supervise the exercise of the functions and the implementation of the policies of the Bank;
- (b) to decide on borrowings by the Bank and their terms and conditions;
- (c) to determine the categories of assets constituting the official international reserves under section 45;
- (d) to adopt regulations issued by the Bank;

- (e) to decide on opening and closing branches and to appoint and dismiss agents and correspondents of the Bank;
- (f) to approve the annual budget of the Bank;
- (g) to decide on acquisition and disposal of its land, buildings and any significant property development of the Bank;
- (h) to approve the reports and financial statements to be submitted to the Minister under section 67(1)(b);
- (i) to decide on the responsibilities of, and procedures for, the Board and the Executive Committee, without prejudice to the provisions of this Act or any other enactment; and
- (j) to carry out any other functions or powers under this Act or any other enactment.

(3) The Board may give directions and advice to the Governor on any matter relating to the functions, duties and powers of the Bank under this Act or any other enactment.

14. Duties and powers of Executive Committee-(1) The Executive Committee must formulate the policies of the Bank.

(2) In carrying out its duty under subsection (1), the Executive Committee has the following powers:

- (a) to formulate the monetary policy of the Bank including, as appropriate, decisions on intermediate monetary objectives, key interest rates, and the supply of reserves;
- (b) to advise the Government on the exchange rate regime;
- (c) to formulate the exchange rate policies;
- (d) to formulate other policies of the Bank concerning the performance of its functions;
- (e) to adopt by-laws, internal rules and directives for the administration and operations of the Bank;
- (f) to determine the internal organisation of the Bank;
- (g) to perform any other functions relating to a decision of the Board or under this Act or any other enactment.

(3) The Executive Committee may appoint subcommittees of the Committee and determine their composition and functions.

15. Duties of the Governor-(1) The Governor is the Chief Executive Officer of the Bank.

(2) The Governor has the following duties:

- (a) to be responsible for the day-to-day administration of the Bank;
- (b) to propose to the Board the monetary and other policies of the Bank and report to Board the financial and economic conditions in Samoa;

- (c) to report to the Board the implementation of the policies and the exercise of the functions, duties and powers of the Bank;
 - (d) to be responsible to the Board for the execution of the Bank's policies and the efficient management of the Bank;
 - (e) in carrying out his or her functions, duties and powers, to follow any general or special directions given by the Board;
 - (f) to issue orders to, impose administrative fines on, and take other enforcement measures against, a bank, securities broker, securities dealer, financial institution, insurer, person included in the National Payment System, and other entity subject to the supervision of the Bank under this Act, the Financial Institutions Act 1996, the National Payment System Act 2014, or any other enactment;
 - (g) to perform the functions, duties or powers of the Money Laundering Authority under section 4(2) of the Money Laundering Prevention Act 2007;
 - (h) to perform the functions of the Commissioner of Insurance as stipulated under section 4 of the Insurance Act 2007;
 - (i) to represent the Bank and enter into contracts on behalf of the Bank; and
 - (j) to carry out any functions, duties or powers of the Bank under this Act or any other enactment except for functions, duties and powers of the Board or the Executive Committee.
- (3) The Governor may delegate in writing his or her functions, duties and powers under this Act to any other officer except for the power under this subsection.

*Division 4 - Appointments of Governor
and Non-Executive Directors*

16. Appointments of the Governor and non-executive directors-

- (1) The position of the Governor of the Bank is established.
- (2) The Head of State, acting on the advice of Cabinet may appoint the following persons:
 - (a) the Governor; and
 - (b) the non-executive directors.
- (3) Persons appointed under subsection (1) must:
 - (a) be citizens of Samoa; and
 - (b) have extensive experience in economics, finance, accounting, auditing, banking, or law.

(4) When advising the Head of State under subsection (1), Cabinet must act on:

- (a) for appointment of the Governor, the proposal of the independent panel under section 17; and
- (b) for appointment of non-executive directors, the proposal of the selection committee appointed under section 18.

17. Appointment panel for Governor-(1) Cabinet may appoint an independent panel comprising two (2) members of the Audit Committee and an independent member.

(2) A person is eligible to be appointed under subsection (1) if the person:

- (a) has qualification and experience in economics, finance, accounting, auditing, banking or law; and
- (b) is not disqualified under section 20(1) or (2).

(3) A person is not eligible for appointment under subsection (1) if the person is or has been a member of the Board or the Executive Committee or an officer 12 months prior to the appointment to the panel.

(4) Subsection (3) does not apply to a non-executive director of the Board who is also a member of the Audit Committee.

18. Appointment panel for non-executive directors-(1) Cabinet may appoint an *ad hoc* Independent Selection Committee (“the Committee”) comprising three (3) members, subject to terms determined by Cabinet.

(2) A person is not eligible for appointment under subsection (1) unless the person has qualification and experience in economics, finance, accounting, auditing, banking or law.

19. Terms of appointment and remuneration-(1) The Governor:

- (a) holds office for six (6) years; and
- (b) is eligible for reappointment for only one (1) more term of six (6) years; and
- (c) is entitled to remuneration and allowances as determined by the Board at the time of his or her appointment, which must not -
 - (i) be diminished during the term of his or her office; or
 - (ii) be based on the profits or revenues of the Bank.

(2) The Governor:

- (a) must devote the whole of his or her professional services to the Bank; and
- (b) must not hold any other office, whether remunerated or not, without the written permission of the Board.

(3) A non-executive director is entitled to remuneration and allowances fixed by Cabinet.

20. Disqualifications-(1) A person must not be appointed to be or continue as a relevant person if the person:

- (a) has been convicted of an offence which carries a sentence of imprisonment;
- (b) has been a debtor in a bankruptcy or insolvency proceeding;
- (c) has, on the grounds of personal misconduct, been disqualified or suspended by a competent authority from practicing a profession or has been prohibited from being a director or officer of any public or commercial entity;
- (d) has been found guilty of serious misconduct in office; or
- (e) is the spouse, child, parent, son, daughter, brother, or sister of the relevant person.

(2) A person must not be appointed to be or continue as a relevant person while the person is:

- (a) a Member of Parliament;
- (b) a Cabinet Minister;
- (c) an officer or employee of the Government;
- (d) a director, chief executive officer or employee of a state-owned entity; or
- (e) a director, chief executive officer, officer or employee or beneficial owner of 5% or more, of a bank, securities broker, securities dealer, financial institution, insurer, person included in the National Payment System Act 2014, or of any other entity under the supervision of the Bank.

(3) Subsection (2) does not prevent an officer or employee of a university from being appointed a non-executive director.

(4) Subject to subsection (5), in this Division, “relevant person” means the Governor or a non-executive director.

(5) Subsection (2)(e) does not apply to a non-executive director.

21. Resignation - A relevant person may, in writing to the Head of State, resign from office:

- (a) for the Governor by giving at least three (3) months’ notice before the date of the resignation; and
- (b) for a non-executive director, by giving one (1) months’ notice before the date of resignation.

22. Removal of Governor-(1) The Head of State, acting on the advice of Cabinet, may remove the Governor from office if the Governor:

- (a) falls within any of the grounds under section 20(1) or (2); or

- (b) is unable to perform the functions, duties or powers of the office because of an infirmity of body or mind that has lasted for more than three (3) months; or
- (c) has failed to perform the functions, duties or powers for a consecutive period of more than three (3) months without approval of the Board.

(2) The Cabinet may only advise the Head of State to remove the Governor under subsection (1), based on a proposal of the Audit Committee to remove the Governor.

(3) Prior to making a proposal under subsection (2), the Audit Committee must hear the Governor and report to the Cabinet whether the Governor falls within any of the grounds under subsection (1).

(4) The Governor removed from office may, within 20 working days of receiving the decision, appeal the removal to the Supreme Court.

(5) The Governor must not be removed from office on any ground other than the grounds laid down in this Act.

(6) When the term of the Governor is about to expire, any appointment or reappointment of a Governor must be completed at least one (1) month before the term expires.

23. Removal and vacancies of non-executive Directors-(1) The Head of State acting on the advice of Cabinet may remove a non-executive director if:

- (a) the director fails to attend three (3) consecutive Board meetings without an apology being received and accepted by the Chairperson of the Board; or
- (b) attains the age of 70 years and is not recommended by the *ad hoc* Committee for reappointment; or
- (c) becomes bankrupt; or
- (d) is convicted in Samoa or elsewhere of an offence punishable by death or by imprisonment for a term of two (2) years or more; or
- (e) is convicted of an offence relating to his or her duties as a director; or
- (f) fails to complete the form for declaration of pecuniary interests and convictions as approved by the Governor.

(2) The Office of a non-executive director becomes vacant if the director dies, resigns or is removed from office.

24. Extraordinary vacancy in office-(1) If a relevant person dies, or resigns, or is removed from office under this section, the vacancy:

- (a) is treated as an extraordinary vacancy; and
- (b) must be filled within two (2) months pursuant to section 16.

(2) A person appointed to fill an extraordinary vacancy must hold office for the unexpired balance of the term of the office of the predecessor, but may be reappointed once.

Division 5 - Officers, Auditor and Audit Committee

25. Officers and employees of the Bank-(1) The Governor may appoint and employ, at the remuneration and on terms and conditions as the Governor may determine, officers and employees of the Bank necessary to carry out the functions, duties and powers of the Bank.

(2) The power to appoint includes the power to suspend, terminate or to institute disciplinary proceedings.

(3) The Governor may issue employment guidelines for the purpose of this section.

26. Internal Auditor-(1) The Board may, on the proposal of the Governor, appoint an Internal Auditor of the Bank for a period determined by the Governor.

(2) A person:

(a) is eligible for appointment as the Internal Auditor if the person has extensive professional experience in accounting and auditing; but

(b) is not eligible for appointment if the person would be disqualified on any of the grounds specified under section 20(1) or (2).

(3) The Internal Auditor may be removed by the Board only on the ground specified under section 20(1) or (2).

(4) The Internal Auditor must:

(a) monitor and evaluate the effectiveness of risk management, governance processes, and other internal controls;

(b) evaluate the effectiveness and efficiency of the Bank's operations;

(c) review the financial statements and the statement of assets and liabilities referred to under section 67(1)(a) and (c);

(d) monitor and assess the implementation of the audit recommendations;

(e) periodically and at least quarterly, report to the Board and the Executive Committee on the results of the internal audit activities, the identified risk exposures and control issues, the recommendations on the risk exposures and control issues, and the management's responses to, and corrective actions taken against, the recommendations;

(f) provide any advice and perform special reviews on the request of the Board or the Executive Committee;

(g) liaise with an external auditor of the Bank.

(5) The Board must define the responsibilities, scope, and other terms and conditions of the internal audit functions pursuant to the Internal Audit Charter approved by the Audit Committee.

27. Audit Committee-(1) The Board may appoint an Audit Committee, comprising:

- (a) a chairperson; and
- (b) two (2) other members from amongst the non-executive directors.

(2) The Board may if necessary appoint an external expert to be a member of the Committee.

(3) A person who has extensive professional experience in accounting and auditing is eligible to be appointed as an external expert.

(4) A person is not eligible to be appointed as an external expert if the person:

- (a) would be disqualified as a member of the Board or Executive Committee on any of the grounds specified under section 20(1) and (2); and
- (b) is or has been a member of the Board or the Executive Committee or an officer, in three (3) years prior to the appointment to be the external expert.

(5) The Board may remove an external expert only on any of the grounds under section 20(1) or (2).

(6) The Audit Committee must:

- (a) oversee the internal audit functions;
- (b) recommend to the Board the appointment of an external auditor and the scope of external audits;
- (c) meet with an external auditor and discuss findings of the external auditor;
- (d) review with an external auditor the year-end financial statements;
- (e) oversee the implementation by the Governor of the recommendations of internal and external audits; and
- (f) periodically report its activities to the Board;
- (g) monitor compliance of the Bank's statutory obligations;
- (h) identify the major risks the Bank is exposed to and ensure that the internal control systems used by the Bank operate with due regard to economy, efficiency and effectiveness;

(7) The Board must determine procedures, and responsibilities of the Audit Committee pursuant to the Audit Committee Charter approved by the Board.

28. Conflict of interest and gifts-(1) In this section and sections 29 to 30:

“member” means a member of the Board, the Executive Committee or any other subcommittee or committee appointed under this Act;

“private or personal interests” means any potential advantage for members and any person with whom the members have any family, business, or financial connections.

(2) A member or an officer must avoid any situation likely to give rise to a conflict of interest which arises out of any private or personal interests which may influence or appear to influence the impartial and objective performance of their functions, duties and powers under this Act.

(3) A member who has any direct or indirect interest in any arrangement entered into, or proposed to be entered into by the Bank, must as soon as possible after the relevant facts have come to the member’s notice, disclose the nature of the direct or indirect interest at a meeting of the Board or relevant Committee.

(4) A disclosure under subsection (3) must be recorded in the minutes of the meeting of the Board or the relevant Committee and the member must not take part after the disclosure in any deliberation or decisions relating to the arrangement, but must be counted as present for the purpose of forming a quorum of the Board or the Executive Committee for that deliberation or decision.

(5) A member must disclose to the Board or any committee appointed under this Act significant financial interests in which a member and any person with whom the member has family, business, or financial connections whether directly or indirectly unless the disclosure is made under the internal rules issued by the Board.

(6) A member or an officer, must not accept any gift or advantage for himself or herself, or for any person with whom the member may have any family, business, or financial connections if:

- (a) the value of the gift or advantage exceeds a customary or negligible amount; and
- (b) its acceptance would result, or give the appearance of resulting in a diminishment of his or her impartial devotion to functions, duties or powers under this Act.

29. Confidential information-(1) A member or an officer must not use confidential information for the purpose of carrying out directly or indirectly any private financial transactions on his or her own account or as an agent of another person.

(2) A member or an officer who contravenes subsection (1) or section 28(3), (5) or (6) commits a serious misconduct in office and is as a ground for removal of the member, or for disciplinary action against the officer.

30. Secrecy-(1) A member or an officer must not disclose to another person any confidential information which the member or officer has acquired in the performance of his or her duties under this Act, unless the disclosure is:

- (a) made with the consent of the person to whom the information relates;
 - (b) required by any court or law enforcement agency or by the law;
 - (c) made to an external auditor;
 - (d) made to any domestic or foreign regulatory or monetary authorities or any public international financial institutions;
 - (e) required for the interests of the Bank in legal proceedings; or
 - (f) necessary for performing any function of the Bank,
- and the Bank is satisfied that the disclosed information will be treated as confidential by the person to whom the information is disclosed.

(2) A member or an officer must upon appointment or employment make a declaration of secrecy in a form approved by the Board.

(3) The declaration of secrecy remains valid even after a member or an officer ends his or her services with the Bank.

(4) A member or an officer who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding two (2) years, or both.

31. Legal protection and indemnification-(1) A member, officer, agent, or correspondent of the Bank (including a person previously holding that position) must not incur any liability as a result of any act or omission relating to any function, duties and powers done or omitted to be done on behalf of the Bank unless it is proven that the act or omission constitutes intentional wrongful conduct or gross neglect.

(2) The Bank must indemnify a member, officer, agent, or correspondent of the Bank (including a person previously holding that position) against costs incurred in defence of a legal action proceeding brought against the person relating to function, duties and powers within scope of appointment, employment or engagement under this Act.

(3) The indemnification must not be provided if the person has been convicted of an offence arising out of activities which are covered by the legal proceedings.

PART 3
CAPITAL, RESERVES, PROFITS AND BUDGET

32. Capital-(1) The authorised capital of the Bank must be determined by the Board and approved by the Minister.

(2) The Board with the approval of the Minister may increase (but not reduce) the authorised capital under subsection (1).

(3) At the commencement of this Act paid-up capital of the Bank is \$20,000,000.

(4) The paid-up capital under subsection (3) may be increased through the transfer of the amount from the General Reserve Account under section 36(6) or of cash or negotiable securities by the Government under subsection (6).

(5) All capital stock of the Bank, as and when subscribed, must be for the sole account of the Government and may not be transferred or subjected to encumbrance.

(6) The Minister must transfer cash or negotiable securities issued by the Government to the Bank if the Bank's annual certified financial statements show that the excess of the value of the Bank's assets over its liabilities are less than 5% of the value of its monetary liabilities.

(7) The transfer under subsection (6) must be performed within a period of not more than 20 working days after the submission of the certified financial statements to the Minister under section 67(1)(b) and the amount transferred must be an amount as is necessary for increasing the excess of the value of the Bank's assets over its liabilities to 5% or more of the value of its monetary liabilities.

(8) Securities issued under this section must be negotiable government securities, bearing market interest rates and with a specified maturity.

33. Reserve accounts - The Bank must establish:

(a) a General Reserve Account which may be used only for the purpose of -

(i) covering losses sustained by the Bank; or

(ii) increasing the paid-up capital of the Bank;

and

(b) an Unrealised Revaluation Reserve Account which accounts for unrealised gains and losses owing to its positions with foreign currencies, gold, financial instruments, and other assets.

34. Net profits - The net profits of the Bank for any financial year must be determined under the International Financial Reporting Standards.

35. Distributable profits-(1) Profit available for distribution must be computed from net profit by:

- (a) deducting from the net profit the amount of all unrealised revaluation gains included in the net profit, and allocating an equivalent amount to the Unrealised Revaluation Reserve Account;
- (b) deducting from the Unrealised Revaluation Reserve Account the amount of all unrealised revaluation losses included in the net profit until such time as the balance of that account is equal to zero, and adding an equivalent amount to the distributable profit; and
- (c) deducting from the Unrealised Revaluation Reserve Account the amount of any unrealised gains which were deducted from net profits in previous financial years and realised in the current financial year, and adding an equivalent amount to the distributable profit.

(2) If unrealised revaluation losses included in the net profit exceed the available balance on the Unrealised Revaluation Reserve Account, the exceeding amount of the unrealised revaluation losses must first be covered from distributable profit and then covered from the General Reserve Account.

36. Allocation of distributable profits-(1) At the end of each financial year, the Bank must allocate to the General Reserve Account:

- (a) all net or distributable profits if the sum of the General Reserve and Authorised Capital is not more than 20% of the Bank's monetary liabilities; and
- (b) 50% of all net or distributable profits if the sum of the General Reserve and Authorised Capital exceeds 20% but not more than 50% of the Bank's monetary liabilities.

(2) After the allocations under subsection (1) have been made to the General Reserve Account, the remainder of the distributable profit for the financial year must be applied to the redemption of any government securities held by the Bank which have been transferred under section 32(6).

(3) The balance of the distributable profit remaining after allocations and applications under subsections (1) and (2) may be allocated to:

- (a) a reserve established for the purpose and in an amount as determined by the Board and approved by the Minister; and
- (b) the General Reserve Account in an amount the Board (with the approval of the Minister) determines, regardless of whether the sum of the paid-up capital and the General

Reserve Account exceeds the amount specified under subsection (1)(b).

(4) The balance of the distributable profit for the financial year remaining after all allocations and applications under subsections (1), (2), and (3) have been made must be paid to the Treasury Fund as soon as practicable.

(5) An allocation, application, or payment of Bank's net profit or distributable profit must only be made if permitted under this section.

(6) The Board may, with the approval of the Minister, transfer from the General Reserve Account any amount not exceeding the difference between the paid-up capital and the authorised capital to the paid-up capital.

(7) Any negative distributable profit incurred by the Bank must first be debited to the General Reserve Account and subsequently to the paid-up capital.

37. Budgets - The Board may approve the annual budget of the Bank.

PART 4 CURRENCY

38. Sole right to issue currency-(1) The Bank has the sole right of issuing currency in Samoa.

(2) A person, other than the Bank, must not issue any currency or documents payable to bearer on demand having the appearance of or purporting to be currency.

(3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding 1,000 penalty units, or to imprisonment for a term not exceeding 14 years, or to both.

39. Defacement of notes-(1) A person must not, without the authority of the Bank, wilfully cut, tear, file or otherwise damage, disfigure or mutilate, or deface by means of any writing, printing, stamp, mark or erasure any currency.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 100 penalty units or to an imprisonment for a term not exceeding two (2) years, or to both.

40. Currency unit and legal tender-(1) The currency unit of Samoa is "Tala" divided into 100 "sene".

(2) Currency issued by the Bank is legal tender in Samoa.

41. Manufacture and characteristics of currency-(1) The Bank:

- (a) must arrange for the printing, striking, issue of or any other matter relating to the currency and for the security and safekeeping of unissued currency and for the custody, disposal and destruction, as necessary, of plates and retired currency; and
 - (b) with the approval of the Minister, may determine the denomination, composition, form, design, content and material of the currency.
- (2) The characteristics of currency to be issued by the Bank must be published in the *Gazette* or the *Savali*.

42. Power to recall-(1) Despite section 40(2) the Bank may, by notice in the *Savali* and in one other newspaper published in general circulation in Samoa, call in, for the purpose of withdrawing from circulation, any currency issued by the Bank on payment of its face value.

(2) The currency recalled under subsection (1) ceases to be legal tender and cannot be redeemed when the period in the notice expires.

43. Recovery of lost, stolen, mutilated, or damaged currency-(1)

A person is not entitled to recover from the Bank the value of any lost or stolen currency, except under any express waiver made for the assumption by the Bank of risks incidental to shipments of currency.

(2) The conditions under which mutilated or otherwise damaged currency may be exchanged or refunded at partial or face value must be determined by the Bank.

44. Counterfeit currency-(1) The Bank must assist in the enforcement of any law on counterfeiting of currency in Samoa.

(2) A certification by an officer of the Bank (authorised by the Governor) that an item in question is or is not genuine, is *prima facie* evidence of the fact in any legal proceeding in Samoa.

PART 5
INTERNATIONAL RESERVES
AND FOREIGN EXCHANGE

45. Official international reserves-(1) The Bank must manage and maintain all official international reserves of Samoa consisting of all or any of the following on any terms and conditions determined by the Executive Committee:

- (a) gold;
- (b) foreign exchange in the form of coins, banknotes, or bank balances held abroad and denominated in freely convertible foreign currencies;

- (c) claims on public international financial institutions, including -
 - (i) the reserve tranche position of Samoa in the General Department of the International Monetary Fund; and
 - (ii) the holding of any special drawing rights by Samoa in the International Monetary Fund;
 - (d) treasury bills denominated in freely convertible foreign currency and issued by foreign governments determined by the Executive Committee;
 - (e) readily-marketable securities denominated in freely convertible foreign currencies and issued or guaranteed by foreign governments, central banks, international organisations, public international financial institutions or any foreign public authority determined by the Executive Committee;
 - (f) such other readily-marketable external assets as they specify.
- (2) When the Bank manages and maintains the official international reserves, it must respect reliability, liquidity, and yield in that order of priority.
- (3) The Bank must:
- (a) endeavour to maintain the official international reserves at an adequate level, in the opinion of the Executive Committee, for achieving the objectives of the Bank; and
 - (b) if, in the opinion of the Executive Committee, the official international reserves have declined or are likely to decline below the adequate level, submit to the Minister a report setting out the causes of the decline and any recommendations to remedy the situation.

46. Operations in reserve assets - Without affecting section 45(1), the Bank may:

- (a) buy, sell or deal in gold;
- (b) buy, sell or deal in coins and banknotes denominated in foreign currency;
- (c) buy, sell or deal in treasury bills and other securities issued or guaranteed by foreign governments, central banks, international organisations, public international financial institutions or any foreign public authorities specified in writing by those governments, banks or institutions;
- (d) open and maintain accounts with central banks, other banks and financial institutions abroad, and public international financial institutions;

- (e) open and maintain accounts for, and act as agent or correspondent of, central banks, foreign banks and financial institutions, foreign governments and their agencies, international organizations, and public international financial institutions; and
- (f) borrow in foreign currency on terms and conditions determined by the Board and give security for loans with the approval of the Board.

47. Limitations - The Bank must, in connection with the operations listed in section 46, deal only with the following:

- (a) banks and credit institutions doing business in Samoa;
- (b) the Government, foreign governments, their agencies and foreign public authorities;
- (c) international organisations;
- (d) central banks, foreign banks, foreign financial institutions and public international financial institutions.

48. Exchange rate regime and policy-(1) The Minister may, in consultation with the Bank, determine the exchange rate regime.

(2) When making any determination under subsection (1), the Minister may have due regard to the obligations which Samoa has assumed under any international monetary agreement to which Samoa is a party or to which Samoa has adhered.

(3) The Bank must, in consultation with the Government, determine the exchange rate policy.

(4) Except with the prior written approval of the Bank, a person who exchanges any Samoa currency for the currency of any other country, at a rate inconsistent with the rate regime determined under subsection (1) commits an offence and on conviction is liable to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding five (5) years, or to both.

49. Exchange control regulations - The Bank must exercise the powers of exchange control pursuant to the exchange control regulations made pursuant to section 80.

PART 6 MONETARY AND FINANCIAL STABILITY

50. Opening accounts - The Bank may, under any terms and conditions, determine, open accounts for, and accept deposits from:

- (a) the Government or state-owned entities; or
- (b) banks, securities brokers, securities dealers, other financial institutions, and insurers, doing business in Samoa.

51. Monetary operations - For achieving its objectives of domestic price and financial system stability and exercising its related functions, the Bank may:

- (a) issue drafts and effect any other kinds of remittance payable at its own offices or at the offices of any agent and correspondent for the Bank's own account and account holders;
- (b) purchase from, sell to, discount and rediscount for banks, securities dealers, securities brokers, other financial institutions, and insurers -
 - (i) bills of exchange and promissory notes drawn or made for *bona fide* commercial, industrial, or agricultural purposes, bearing two (2) or more good signatures of which one (1) must be that of a bank; and
 - (ii) government treasury bills;
- (c) for its own account, issue bonds and other negotiable debt instruments on any terms and conditions determined by the Board, and purchase, sell, and place the instruments in the financial markets;
- (d) buy and sell outright or under re-purchase agreements, lend, and borrow securities and other marketable financial instruments as well as precious metals in the financial markets;
- (e) grant to banks, securities dealers, securities brokers, other financial institutions, and insurers loans, advances, and other credit facilities adequately secured by -
 - (i) instruments specified in paragraphs (b), (c), and (d);
 - (ii) any assets listed under section 45(1); or
 - (iii) any other assets, as the Board may determine.

52. Determination of collateral and rates-(1) The Board must determine terms and conditions of, and types of instruments and collateral to be used for, operations under section 51.

(2) The Bank:

- (a) must determine and publicly announce from time to time its minimum rates for discounts, rediscounts, advances, loans or overdrafts; and
- (b) may determine different rates for various classes of transactions or maturities.

53. Minimum reserves-(1) The Bank may:

- (a) require a bank to maintain the reserves determined by applying to the amount of the banks' deposits and other liabilities any reserve ratios determined by the Executive Committee; and
 - (b) fix rates of interest to be paid to banks on all or part of any reserves required to be maintained under paragraph (a); and
 - (c) determine different reserve ratios for different classes of deposits and other similar liabilities and the method of their computation (but the specified reserve ratios must be uniform for all banks and financial institutions within the same category).
- (2) The reserves required under subsection (1) must be maintained by way of deposits with the Bank.
- (3) A bank that fails to maintain the reserves as required under this section is liable to pay, as a debt due to the Bank, a penalty determined by the Bank not exceeding 0.1% of the amount of the deficiency in the bank's reserve holdings for each day on which the deficiency continues.

54. Other instruments of monetary control - In order to achieve the Bank's objectives and the exercise of its related functions, the Board may, by two-thirds majority, decide upon use of any operational methods of monetary control as it considers fit.

55. Interest and credit-(1) The Bank may require banks, securities dealers, securities brokers, other financial institutions, or insurers to comply with:

- (a) the maximum or minimum (or both) rates of interest payable for deposits and other similar liabilities and its method of computation;
- (b) the permissible purposes, aggregate callings, maximum amounts beyond which the approval of the Bank is necessary, the maximum maturities, and maximum and minimum rates of interest chargeable for -
 - (i) making of advances, whether by loans or overdrafts, and investments;
 - (ii) discounting of bills of exchange, promissory notes and other commercial or financial paper;
 - (iii) issuing of letters of credit; and
 - (iv) granting of acceptances and other forms of credit; and
- (c) other prudential ratios for the purpose of fostering and maintaining the stability of the financial system in Samoa as a whole.

(2) The Bank may:

- (a) differentiate in respect of the items specified in subsection (1) among banks, securities brokers, securities dealers, other financial institutions, and insurers; and
- (b) for subsection (1)(c), in particular, impose on banks, securities brokers, securities dealers, other financial institutions, and insurers the prudential ratios related to the amount of cash and other collateral and the income of borrowers required for items listed in subsection (1)(b); and
- (c) examine the accounts, books, and papers of a person when the Bank has a reason to suspect that the person contravenes a requirement under this section.

(3) A bank, securities broker, securities dealer, financial institution, or insurer that:

- (a) fails to comply with any requirement under this section; or
- (b) supplies to the Bank false or misleading information; or
- (c) fails to provide information required by the Bank about a requirement under this section,

is liable to a pecuniary penalty not exceeding 100 penalty units determined by the Bank and is recoverable as a debt due to the Bank.

56. Supply of information-(1) A bank, securities broker, securities dealer, other financial institution, insurer, or person included in the National Payment System must, within 14 days upon written request by the Bank, provide to the Bank any document or information regarding its business, or that of any related company in Samoa or elsewhere, as the Bank may require for the purposes of this Act, the Financial Institutions Act 1996, or any other enactment.

(2) The Bank:

- (a) may extend the period under subsection (1) if requested by a person mentioned in that subsection; and
- (b) may publish any document or information provided to it under subsection (1); but
- (c) must not publish the document or information in a manner which would disclose the affairs or identity of any person who is a customer of a bank, securities broker, securities dealer, financial institution, insurer, or person included in the National Payment System except with the written consent of the customer.

(3) In this section, “related company” includes a holding company, a subsidiary, and a subsidiary of a holding company, of a person specified under subsection (1).

57. Lender of last resort-(1) In extraordinary circumstances, the Bank may, on any terms and conditions as determined by the Board, grant financial assistance (“financial assistance”) to a bank.

(2) The financial assistance:

(a) may be granted only if, in the opinion of the Board -

(i) the bank is solvent and can provide adequate collateral to support the financial assistance and the financial assistance is necessary for improving the bank’s liquidity conditions; or

(ii) any financial assistance as is necessary to preserve the stability of the financial system; and

(b) may be granted only for a period not exceeding 91 days; and

(c) must bear interest at a rate higher than that announced under section 52(2); and

(d) on the basis of a programme specifying remedial measures to be taken by the bank, may be renewed by the Board -

(i) once for an additional period not exceeding 91 consecutive days; or

(ii) when, in the opinion of the Board, the cause for bank’s financial needs is beyond the bank’s control, for additional periods each not exceeding 91 consecutive days.

(3) The Board must:

(a) determine the minimum value of collateral to secure the financial assistance provided under subsection (2)(a)(i); and

(b) in case that financial assistance is provided under subsection (2)(a)(ii), require the bank to provide the Bank with as much collateral as possible.

(4) If the Bank ascertains that a bank which receives financial assistance under subsection (1) has not implemented remedial measures specified under subsection (2)(d) or that the remedial measures have not achieved the results intended, the Bank must take any necessary measures.

(5) The Government must guarantee the Bank repayment of any financial assistance provided under subsection (2)(a)(ii) and indemnify the Bank for any losses incurred as a result of any financial assistance provided under that subsection.

(6) When the Bank submits to the Minister certified financial statements which specify losses arising from financial assistance provided under subsection (2)(a)(ii), the Minister must, within 20 working days after the relevant balance sheet date, transfer to the Bank cash or negotiable debt instruments issued at prevailing market-related rates and with a specified maturity, the amount of which is necessary for compensating the losses incurred by the Bank.

58. National Payment System - The Bank may:

- (a) provide intra-day credits to a person holding accounts with the Bank for the purpose of ensuring the safety and efficiency of the National Payment System, if adequate collateral is provided to the credits;
- (b) organise, own, operate, participate in, or provide facilities for, clearing systems, payment systems, and settlement systems; and
- (c) regulate and oversee the National Payment System under the National Payment System Act 2014.

PART 7**RELATIONS WITH THE GOVERNMENT**

59. Bank to be fiscal agent of Government-(1) Without affecting sections 61 to 65, the Bank:

- (a) must, on terms and conditions as agreed with the Minister, act as a fiscal agent of the Government; and
 - (b) may also act as a fiscal agent of any state-owned entity.
- (2) As a fiscal agent of the Government, the Bank must:
- (a) make and receive payments and effectuate transactions on behalf of the Government and keep records of the Bank's accounts;
 - (b) maintain a register for securities issued by the Government;
 - (c) provide services to facilitate issuance, repayment, and management of securities issued by the Government; and
 - (d) act as a depository of any public international financial institution of which Samoa is a member.

60. Cooperation with the Government-(1) Without affecting section 5 or the attaining of its objectives, the Bank must:

- (a) cooperate with the Government; and
- (b) hold regular meetings with the Ministry of Finance, on monetary, fiscal, and other matters which may affect the Bank and the Ministry of Finance jointly.

(2) The Bank may advise the Government on any matter which is likely to affect the performance of its functions.

(3) The Bank must be consulted on any law reform proposed by the Government concerning money, credit, banking, or any other matters relating to the Bank's objectives and functions.

(4) The Bank and the Ministry of Finance must keep one another fully informed of all matters that affect the Bank and Ministry of Finance jointly.

(5) The Ministry of Finance must, on the request of the Bank, provide the Bank with any information and data as the Bank may request for the purpose of carrying out the Bank's functions as a fiscal agent and other functions.

61. Credits to Government-(1) The Bank may grant credits to the Government for a period not exceeding five (5) years, subject to any extension approved by the Board.

- (2) All outstanding credits of the Bank to the Government must be:
- (a) repaid before the end of the term of the credit; or
 - (b) converted into negotiable debt instruments of the Government.

62. Credits to state-owned entities-(1) The Bank must not grant loans, advances, or any other forms of credits to a state-owned entity unless the loans, advances, and credits are fully guaranteed by the Government.

(2) Loans, advances, and any other forms of credits of the Bank to a state-owned entity must be granted for a period not exceeding three (3) months and at prevailing market-related rates.

- (3) All outstanding credits of the Bank to state-owned entities must be:
- (a) repaid before the end of the term of the credit; or
 - (b) novated by the Government.

(4) This section, section 63 or 64 does not apply to a state-owned entity which is a bank unless the bank is treated under the same conditions as a privately owned bank.

63. Acquisition of debt instruments issued by Government and state-owned entities-(1) Subject to section 61, the Bank must not acquire in the primary market notes, bills, securities or other debt instruments issued or guaranteed by the Government or by any state-owned entity, unless the instruments are negotiable and issued at prevailing market-related rates and with a specified maturity.

(2) The Bank may acquire negotiable debt instruments of the Government or a state-owned entity in the secondary market under section 54.

64. Ceiling on credits to Government and state-owned entities-(1) Subject to subsection (2), the total amount of outstanding advances made to the Government and state-owned entities under section 61(1) or 62(2) may not exceed 25% of the annual average Revenue, and the Bank must report the circumstances to the Minister whenever, in the opinion of the Board, it is likely to be exceeded.

(2) The Government may, by notice in writing given by the Bank to the Minister, authorise the total amount mentioned in subsection (1) to be increased to an amount not exceeding 35% of the annual average Revenue for a maximum period of six (6) months.

65. Limitations - The Bank may not provide any credits to the Government or any state-owned entity or acquire any debt instruments issued or guaranteed by the Government or by any state-owned entity except as expressly provided in this Act.

PART 8 AUDIT AND ACCOUNTABILITY

66. External audit-(1) An independent external auditor must carry out an annual audit of the Bank's accounts and financial statements, pursuant to the International Standards on Auditing.

(2) The Board may, with the recommendation of the Executive Committee and the approval of the Minister:

(a) appoint a person of good repute and who has recognised international experience in the auditing of major international financial institutions as the independent external auditor; and

(b) dismiss the independent external auditor for good cause.

(3) The independent external auditor may be appointed for at least three (3) years.

(4) A key audit partner for the Bank's external audit must be changed after a period not exceeding seven (7) years.

(5) An independent external auditor may examine any books and accounts of the Bank and obtain any information about its transactions.

(6) This section does not affect any functions, duties and powers of the Auditor General conferred under the Audit Act 2013, and the Constitution relating to mandatory auditing of Public Entities, Public Assets, Public Equity, Public Liabilities and Public Money including the power to conduct performance audits under Part VI and section 38 of the Audit Act 2013.

67. Preparation of reports and financial statements-(1) The Bank must:

(a) prepare its annual financial statements pursuant to the International Financial Reporting Standards; and

(b) publish and submit to the Minister -

(i) a copy of the financial statements certified by the external auditor within three (3) months after the end of each financial year; and

- (ii) a report on operations of the Bank.
- (c) as soon as practicable after the last working day of each month, submit to the Minister and publish a statement of its assets and liabilities at the close of business on that day.
- (2) The Minister must:
 - (a) lay copies of the financial statements and reports referred to in subsection (1)(b) before the Legislative Assembly within 28 days after they are submitted to the Minister if the Legislative Assembly is then meeting, or if it is not, within seven (7) days after the commencement of the next ensuing meeting; and
 - (b) cause copies of the financial statements referred to in subsection (1)(b) to be published in the Savali as soon as practicable after tabling of the reports in the Legislative Assembly.

PART 9 MISCELLANEOUS

68. Power to prosecute-(1) Subject to Article 41(2) of the Constitution, the Bank may investigate or institute, conduct or discontinue any proceedings for, any offence under any of the following Acts:

- (a) this Act;
 - (b) Financial Institutions Act 1996;
 - (c) National Payment System Act 2014;
 - (d) Insurance Act 2007;
 - (e) Securities Act 2006;
 - (f) any other prescribed Act.
- (2) For the purpose of subsection (1), the bank may appoint lawyers or other qualified and experienced persons to carry out the powers under subsection (1).
- (3) The Bank may give directives to a person appointed under subsection (2).

69. Collection and dissemination of statistics-(1) For the purposes of its objectives, the Bank must:

- (a) collect and compile statistics relevant to its functions;
- (b) specify statistical information to be submitted by any to the Bank;

- (c) publish statistics compiled from statistical information specified under paragraph (b) and the methodology used for the compilation pursuant to the confidentiality rules determined by the Board;
 - (d) collaborate with the Government in collecting, compiling, and publishing statistics and relevant information; and
 - (e) collaborate with international organisations in adopting international data dissemination standards.
- (2) When carrying out its functions under this Act, the Bank may require any person or class of persons to collect and provide any statistical information under subsection (1)(b).
- (3) Statistical information received under subsection (2) is treated as confidential.
- (4) A person who fails to comply with the requirement of the Bank under subsection (2) commits an offence and is liable on conviction to a fine not exceeding 100 penalty units.

70. Custodial facilities - The Bank may provide, under such terms and conditions as determined by the Board, custodial facilities to any person for currencies, securities, precious metals, and any other valuable assets.

71. Fees - The Bank may by Notice in the Savali determine fees for its services, including those related to its functions as a fiscal agent or for the purposes of this Act.

72. Inter-agency and international cooperation - For the purposes of its objectives and functions, the Bank may cooperate with domestic and foreign regulatory and monetary authorities, public international financial institutions, and international organisations by exchanging information, coordinating activities, and making other cooperation arrangements.

73. Exemption from taxation-(1) The Bank is not liable to taxation except for customs and excise duties.

(2) Despite subsection (1) the Bank is exempt from customs duties on banknotes or coins imported by the Bank.

(3) For the purposes of subsection (1), the Bank is a statutory authority for the purposes of Part A(1)(a) of Schedule 2 of the Income Tax Act 2012.

74. Prohibited activities - The Bank must not:

- (a) engage in trade, purchase the shares of any corporation or company, including the shares of any bank, or have an ownership interest in any commercial, agricultural,

industrial, or other undertaking except any interest as the Bank acquires in the course of satisfaction of debts due to it (but the interest so acquired must be disposed of as soon as practicable after the acquisition);

- (b) purchase, acquire, or lease real property except when the Bank considers it necessary or expedient for the exercise of its functions or for the housing of, or amenities for, its Governor and other officers (but the Bank may let real property or premises not immediately required for the conduct of its business or for the housing of, or amenities for, its Governor and other officers); or
- (c) grant any credit or make any significant monetary or financial gift except as permitted under this Act.

75. Advances to officers - The Bank may, on any terms and conditions determined by the Board, provide any advance to an officer of the Bank for the purchase, construction, or repair of a single residence for occupation by the officer and his or her family, against the security of the residence.

76. Court proceedings - In any court or arbitration proceedings brought against the Bank, a member of the Board or the Executive Committee or an officer, agent or correspondent of the Bank in connection with their actions or inactions in carrying out their functions, duties or powers to the Bank:

- (a) the court or arbitrator may examine only whether the defendant acted unlawfully or in an arbitrary or capricious manner;
- (b) the action in question must continue without restriction during the period of an appeal and any further appeal or other proceedings related to the appeal; and
- (c) the court or arbitrator may award, if appropriate, monetary damages to an injured party but must not enjoin, stay, suspend, or set aside the proceedings in question.

77. Preferential right-(1) The Bank must have a first priority unconditional preferential right to satisfy any of its claims arising from the execution of its functions from any cash balances, securities and other assets that it holds for the account of the debtor concerned, whether as collateral or otherwise, at the time that the claim becomes due and payable.

(2) An order of a court or an act of a Ministry or government agency or entity is not required for the Bank to exercise its preferential right, and a competing claim must not delay the exercise by the Bank of its preferential right under this section.

78. Immunity from prejudgment attachment-(1) An attachment or execution must not be issued against the Bank or its property before the issuance of a final judgment in any legal action brought before the courts.

(2) The Bank may, in whole or in part, waive the protection under subsection (1), explicitly and in writing, except with respect to its gold and the special drawing rights.

79. Prohibited names - Despite section 19 of the Financial Institutions Act 1996, a bank must not be licensed in Samoa by a name which includes any of the words “Samoa”, “Samoan”, “Central”, “Reserve”, “National” or “State”, or their equivalent in any other language, except with the written approval of the Board.

80. Regulations - The Head of State, acting on the advice of the Cabinet, may make regulations to give effect to the provisions of or for the purposes of this Act.

81. Repeals and amendment-(1) The following enactments are repealed:

- (a) Banking Ordinance 1960; and
- (b) Central Bank of Samoa Act 1984.

(2) In section 2 of the Financial Institution Act 1996, for the definitions of “banking business”, “Board”, “body corporate”, “credit institution” and “financial institution”, insert:

““banking business” means any customary banking operation, and includes the business of accepting deposits of money withdrawable or payable upon demand or after a fixed period or after notice or any similar operation through the sale or placement of bonds certificates, notes or other securities and the use of such funds either in whole or part for loans or investments for the account and at the risk of the person doing such business;

“Board” means the Board of Directors of the Central Bank of Samoa;

“body corporate” means a company incorporated in Samoa or elsewhere under any law for the time being in force relating to the formation and registration of companies, or corporation established in Samoa or elsewhere under any Act;

“credit institution” means any financial institution other than a bank;

“financial institution” means any person doing banking business, and includes all offices and branches of the person or a person doing business as a securities broker or securities dealer;”.

82. Transitional and saving provisions-(1) Despite the repeal of the Central Bank of Samoa Act 1984 (“repealed Act”):

- (a) any regulations, directives, by-laws, rules, orders, and decisions (not inconsistent with this Act) made under the repealed Act continue in force as if they were made under this Act until they expire or are repealed pursuant to this Act;
- (b) any assets, liabilities, and capital of the Bank continue to be vested in and to be the assets, liabilities, and capital of the Bank;
- (c) any currency issued under the repealed Act continues as if it were issued under this Act;
- (d) any contracts entered into, and operations conducted, by the Bank under the repealed Act continue as if they were entered into or conducted pursuant to this Act;
- (e) any current staff, agents, and correspondents of the Bank continue as if they were staff, agents, and correspondents of the Bank appointed or engaged pursuant to this Act;
- (f) the current Governor and Directors, appointed under the repealed Act continue under their respective terms remaining at the commencement of this Act until expiry of their terms or they sooner resign or are terminated subject to subsection (2).

(2) If the person who is the Governor or a non-executive director at the commencement of this Act is re-appointed after the commencement of this Act:

- (a) for Governor, the person is eligible to be appointed for six (6) years pursuant to section 19(1)(a) and thereafter is eligible for reappointment under section 19(1)(b); and
- (b) for non-executive directors, the person is eligible to be reappointed for 1, 2, or 3 years.

(3) The Exchange Control Regulations 1961, in so far as they are not inconsistent with the provisions of this Act, continue in force as if they were made under this Act.

(4) Despite section 59, the Bank may grant credits to state-owned entities if:

- (a) the provisions of the credits are based on credit facilities established before the commencement of this Act;
- (b) the credits are fully guaranteed by the Government; and

(c) the provision of credits does not contravene section 62, but this subsection ceases to have effect on a date determined by the Governor.

(5) Despite sections 6(d) and 45(1), part of official international reserves of Samoa may be held and managed by the Ministry of Finance until a date is determined by the Governor in consultation with the Financial Secretary appointed under the Public Finance Management Act 2001.
