

MONEY LAUNDERING PREVENTION AMENDMENT BILL 2018

SAMOA

Explanatory Memorandum

Object and Reasons:

The Bill seeks to amend the Money Laundering Prevention Act 2007 (“Principal Act”).


The object of the Bill is to implement Samoa’s obligations and adherence to anti-money laundering and countering terrorist financing international standards under Samoa’s Mutual Evaluation Report:

Clauses:

- Clause 1:** - provides for the short title and commencement date of the Bill.
- Clause 2:** - amends section 2 of the Principal Act to insert new terms with its definitions.
- Clause 3:** - inserts new sections 3B and 3C in the Principal Act which requires Trustee companies to conduct customer due diligence, report suspicious transaction and provide information required by Samoa International Finance Authority or the Money Laundering Prevention Authority.

- Clause 4:** - amends section 7 of the Principal Act to give power to the Money Laundering Prevention Authority to issue a freeze order in relation to suspicious transaction.
- Clause 5:** - amends section 8 of the Principal Act to include or allow competent authority to enter into an agreement or arrangement with the Financial Intelligence Unit for the purposes of investigating or prosecuting a serious offence, money laundering offence, financing of terrorism or an offence substantially similar to such offence.
- Clause 6:** - amends section 13 of the Principal Act to include cargo or mail in relation to currency reporting at the border and also increasing the penalty for a person who breaches the section. This clause further adds another person authorised in writing by the Governor pursuant to section 4(2) to be an authorised officer.
- Clause 7:** - substitutes section 16 of the Principal Act in relation to identifying the identity of a customer by financial institution.
- Clause 8:** - inserts new sections 16A, 16B and 16C in the Principal Act regarding customer due diligence and enhanced customer due diligence by financial institution.
- Clause 9:** - inserts new section 21A in the Principal Act for financial institution to reject or suspend a transaction in certain circumstances.

- Clause 10:** - inserts new section 23A in the Principal Act for financial institution to report large cash transaction to the Financial Intelligence Unit.
- Clause 11:** - amends schedule 1 of the Principal Act to insert new clauses 25 and 26.
- Clause 12:** - provides for consequential amendments to the Proceeds of Crime Act 2007, the Counter Terrorism Act 2014, the Tax Administration Act 2012, the Samoa Institute of Accountants Act 2006 and the Crimes Act 2013.



.....

(Hon SILI Epa Tuioti)

**MINISTER OF FINANCE AND MINISTER
RESPONSIBLE FOR CENTRAL BANK OF SAMOA**

**MONEY LAUNDERING PREVENTION
AMENDMENT BILL 2018**

SAMOA

Arrangement of Provisions

1. Short title and commencement
 2. Section 2 amended
 3. New sections 3B and 3C inserted
 4. Section 7 amended
 5. Section 8 amended
 6. Section 13 amended
 7. Section 16 substituted
 8. New sections 16A, 16B and 16C inserted
 9. New section 21A inserted
 10. New section 23A inserted
 11. New clauses 25 and 26 of Schedule 1 inserted
 12. Consequential amendments
-

2018, No.

A BILL INTITULED

AN ACT to amend the Money Laundering Prevention Act 2007 (“Principal Act”) to implement Samoa’s obligations and adherence to anti-money laundering and countering terrorist financing international standards under Samoa’s Mutual Evaluation Report 2015.

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

1. Short title and commencement:

- (1) This Act may be cited as the Money Laundering Prevention Amendment Act 2018.
- (2) This Act commences on the date of assent by the Head of State.

2. Section 2 amended:

In section 2 of the Principal Act, insert in its alphabetical order the following new definitions:

“Asia Pacific/Group” or “APG” means an inter-governmental organisation that Samoa is a part of, consisting of 41 member jurisdictions, focused on ensuring that its members effectively implement the FATF international standards against money laundering, terrorist financing and proliferation financing related to weapons of mass destruction;

“beneficial owner” means a person who owns or controls a customer as well as the person on whose behalf a transaction is being conducted and includes those persons who exercise ultimate effective control over a legal person or arrangement;

“business relationship” means a business, professional, or commercial relationship between a reporting entity and a customer that has an element of duration or that is expected by the reporting entity, at the time when contact is established, to have an element of duration;

“customer due diligence” is the process by which a Financial Institution ensures that they know who their customer is and where their money comes from;

“Financial Action Task Force” or “FATF” means the inter-governmental body established in 1989 by the Ministers of its Member jurisdictions and whose objectives are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system;

“large cash transaction amount” means a cash threshold equivalent to or more than 20,000 Samoan tala;

“politically exposed person” means:

- (a) an individual who holds, or has held at any time in the preceding 12 months, in any overseas country the prominent public function of -
 - (i) Head of State or head of a country or government; or
 - (ii) Government minister or equivalent senior politician; or
 - (iii) Court of Appeal, Supreme Court Judge, or equivalent senior Judge; or
 - (iv) Governor of a Central Bank or Reserve Bank;

- (v) Senior foreign representative, ambassador, or high commissioner; or
 - (vi) High-ranking member of the armed forces; or
 - (vii) Board chair, chief executive, or chief financial officer of, or any other position that has comparable influence in, any Stated enterprise; and
- (b) an immediate family member of a person referred to in paragraph (a), including -
- (i) a spouse; or
 - (ii) a partner, being a person who is considered by the relevant national law as equivalent to a spouse; or
 - (iii) a parent; and
- (c) having regard to information that is public or readily available -
- (i) any individual who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close relationship, with a person referred to in paragraph (a); or
 - (ii) any individual who has sole beneficial ownership of a legal entity or legal arrangement that is known to exist for the benefit of a person described in paragraph (a).

“serious offence” means an offence:

- (a) against a law of Samoa that would constitute unlawful activity; or
- (b) against the law of a foreign State that, if the relevant act or omission had occurred in Samoa, would be an offence that would constitute unlawful activity against any laws of Samoa; or for any imprisonment period or for any fine; or

- (c) is an offence that would generate a proceed of crime, which also includes any offence under the category of terrorist financing or the attempted commission of it.

3. New sections 3B and 3C inserted:

After section 3A of the Principal Act, insert:

“3B. Trustee companies’ obligation to conduct due diligence and report suspicious transaction:

- (1) Despite section 3A, a trustee company must carry out a customer due diligence if required by the Authority.
- (2) A trustee company must report any suspicious transaction that may occur as a result of subsection (1) to the FIU for analysis and any further investigation.

3C. Trustee companies’ obligation to provide information required:

- (1) Subject to section 3 a trustee company must provide any information as required by Samoa International Finance Authority or the Authority to ensure compliance with the Act.
- (2) A trustee company who fails to comply with subsection (1) commits an offence and is liable to an imprisonment term not exceeding five (5) years.”.

4. Section 7 amended:

Section 7 of the Principal Act is amended as follows:

- (a) for subsection (2), substitute:

“(2) Where the Financial Intelligence Unit has reasonable grounds to suspect that a transaction or attempted transaction may:

- (a) involve the proceeds of a serious crime, a money laundering offence or an offence of the financing of terrorism; or
- (b) be preparatory to the offence of the financing of terrorism,

may, by an order of the Authority, freeze without delay the funds affected by that transaction or attempted transaction.”.

(b) for subsections (3) and (4) substitute:

“(3) The Authority may by order under subsection (2), direct a financial institution not to proceed with the carrying out of the transaction or attempted transaction or any other transaction in respect of the funds affected for a period of time determined by the Authority, to allow the FIU to:

- (a) to make any necessary inquiries concerning the transaction or attempted transaction; and
- (b) if the FIU deems it appropriate, to consult with or advise the relevant law enforcement agency about the inquiries.

(4) The Authority may only remove the freeze order if:

- (a) the FIU deems that the transaction is no longer suspicious; or
- (b) the Court has ordered for it to be removed.”.

5. Section 8 amended:

Section 8 of the Principal Act is amended as follows:

- (a) in section 8(1)(c), for the fullstop at the end of paragraph, substitute “; or”; and
- (b) after section 8(1)(c) insert:

“(d) a competent authority.”.

6. Section 13 amended:

Section 13 of the Principal Act is amended as follows:

- (a) in section 13(1) -
 - (i) after “luggage,” insert “cargo or mail”;
 - (ii) for “100 penalty units” and “5 years” substitute “200 penalty units” and “10 years”; and
- (b) in section 13(2)(e) after “FIU;” insert “or”; and
- (c) after section 13(2)(e) insert:

“(f) a person authorised in writing by the Governor pursuant to section 4(2).”.

7. Section 16 substituted:

For section 16 of the Principal Act substitute:

“16. Financial institution to identify the identity of a customer:

- (1) A financial institution shall be required to identify the identity of a customer using primary documents or source secondary documents where necessary, and be satisfied of the identity of the customer when:
 - (a) establishing a business relationship; or
 - (b) conducting any transaction; or
 - (c) there is a suspicion of a money laundering offence or the financing of terrorism; or
 - (d) the financial institution has doubts about the veracity or adequacy of the customer identification or verification.
- (2) For the purposes of subsection (1), the following primary documents shall be used to identify the identity of a customer who is a person:
 - (a) original copy of a valid passport, domestic, national and foreign; or
 - (b) a copy of a valid driver’s license; or
 - (c) any other evidence of identity as may be determined by the order of the Authority, in consultation with the financial institutions, which may be changed from time to time as is necessary.
- (3) If the person does not possess any of the primary documents in subsection (2), then the identity of the customer should be verified using two independently sourced documents, data, or information, which are referred to as secondary documents as determined by the Authority and may be changed from time to time as is necessary.”.

8. New sections 16A, 16B and 16C inserted:

After section 16 of the Principal Act insert:

“16A. Circumstances when standard customer due diligence applies:

A financial institution must conduct standard customer due diligence in the following circumstances:

- (a) if the financial institution establishes a business relationship with a new customer;
- (b) if a customer seeks to conduct an occasional transaction or activity through the financial institution;
- (c) if, in relation to an existing customer, and according to the level of risk involved -
 - (i) there has been a material change in the nature or purpose of the business relationship; or
 - (ii) the financial institution considers that it has insufficient information about the customer; or
 - (iii) any other circumstances specified by way of Regulations.

16B. Standard customer due diligence: verification of identity requirements:

A financial institution must:

- (a) take all reasonable steps to satisfy itself that the information obtained under section 16 is correct; and

- (b) according to the level of risk involved, take reasonable steps to verify any beneficial owner's identity so that the financial institution is satisfied that it knows who the beneficial owner is; and
- (c) if a person is acting on behalf of the customer, according to the level of risk involved, take reasonable steps to verify the person's identity and authority to act on behalf of the customer so that the financial institution is satisfied it knows who the person is and that the person has authority to act on behalf of the customer; and
- (d) provide senior management approval when establishing a business relationship or continuing (for existing customers) with a politically exposed person; and
- (e) verify any other information prescribed by regulations.

16C. Circumstances when enhanced customer due diligence applies:

A financial institution must conduct an enhanced customer due diligence in the following circumstances:

- (a) if the financial institution establishes a business relationship with a customer;
- (b) if a customer seeks to conduct an occasional transaction or activity through the reporting entity and that customer is -
 - (i) a trust or another vehicle for holding personal assets;

- (ii) a non-resident customer from a country that has insufficient anti-money laundering and countering financing of terrorism systems or measures in place;
- (iii) a company with nominee shareholders or shares in bearer form;
- (c) if a customer seeks to conduct, through the financial institution, a complex, unusually large transaction or unusual pattern of transactions that have no apparent or visible economic or lawful purpose;
- (d) when a financial institution considers that the level of risk involved is such that enhanced due diligence should apply to a particular situation;
- (e) if the FATF or APG makes an official request to the FIU;
- (f) any other circumstances determined by the Governor, which may be revoked by the Governor at any time.”.

9. New section 21A inserted:

After section 21 of the Principal Act insert:

“21A. Financial institution to reject or suspend a transaction:

- (1) A financial institution may suspend or reject any fund transfer if:
 - (a) the customer has not produced all necessary information required by the financial institution; or
 - (b) it is a suspicious transaction.
- (2) The financial institution shall only reinstate a transaction if it is satisfied that the customer has provided all the information required or the FIU has given approval for the transaction to continue or both.

- (3) A financial institution must formulate risk based policies and procedures on how to execute, reject or suspend a wire transfer lacking required originator or beneficiary information.”.

10. New section 23A inserted:

After section 23 of the Principal Act insert:

“23A. Financial institution to report large Cash transactions:

- (1) A financial institution must report any large cash transaction to the FIU.
- (2) A financial institution that has made a report must also provide any information regarding the large cash transaction as required by the FIU.
- (3) Any report given under this section must be in the form as approved by the FIU.”.

11. New clauses 25 and 26 of Schedule 1 inserted:

After clause 24 of Schedule 1 of the Principal Act insert:

- “25. Dealers or Promoters of virtual or digital currency, or anything related to block chain technology;
26. Non-Profit Organisations of Samoa;”.

12. Consequential amendments:

- (1) The Proceeds of Crime Act 2007 is amended as follows:

(a) in section 2 -

(i) insert new definition in its alphabetical order:

““assets” means assets of every kind whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets;”; and

(ii) for the definition of “property”, substitute:

““property” includes currency, investments, holdings, possession, assets, property used or dealt with in any way to facilitate, provide, receive, promote or fund terrorist acts listed in section 3 of the Counter Terrorism Act 2014 and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situate, whether in Samoa or elsewhere, whether whole or in part and includes an interest in such property;”;

(b) after section 27 insert:

“27A. Property and Assets of a Specified Entity Frozen:

(1) A specified entity that is or has been listed as a specified entity under the Counter Terrorism Act 2014 shall have all their property, funds and assets frozen without delay.

- (2) The property, funds, and assets may only be unfrozen if:
 - (a) the entity has been removed from the specified entity list under the Counter Terrorism Act 2014; or
 - (b) a bona fide third party has lodged an appeal to the Prime Minister's office seeking the removal of their property from the freeze order.
 - (3) For the purpose of subsection (2)(b), the Prime Minister may make a decision on the advice of the Head of the Money Laundering prevention Authority.
 - (4) A specified entity who contravenes subsection (1) commits an offence and is liable to imprisonment term not exceeding five (5) years.
 - (5) In this section, "specified entity" has the same meaning under section 2 of the Counter Terrorism Act 2014."
- (2) The Counter Terrorism Act 2014 is amended as follows:
- (a) in section 2, in the definition of 'specified entity', after paragraph (b) insert:
 - (c) includes entities listed by the United Nations (past and present) as terrorist entities.";
 - (b) in section 2, in the definition of 'terrorist property' -

- (i) in paragraph (b) after “entity;” insert “or”;
- (ii) after paragraph (b) insert -

“(c) or the wilful provision or collection, by any means, directly or indirectly, of funds by Samoan nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts.”;

- (c) after section 3(1)(a)(ix), insert:

“(x) involves the collection or provision of funds in relation to aircraft safety, nuclear material, and fixed platform offences on section 36, as well as funds for the proliferation of weapons of mass destruction.”;

- (d) in section 4(2) after “Act” insert:

“and includes specifically United Nations Security Council Resolutions 1267 and 1988.”;

- (e) after section 4, insert:

“4A. Prime Minister to extend or de-list an entity from the list of specified entities:

- (1) The Prime Minister, acting on the advice of the Authority, may extend the specified entity or de-list under this Act only upon reasonable and lawful grounds, as well as taking into consideration the procedures of the United Nations. Foreign countries may submit an application to the Prime Minister on any issue regarding this Act.

- (2) For the purpose of this section, the Authority has the same meaning in section 2 of the Money Laundering Prevention Act 2007.”;
- (f) for section 45 substitute “, except the penalties for offences under that Act,” with “shall”;
- (g) after section 16, insert:

“16A. Prohibition on dealing with property of designated entity:

- (1) A person commits an offence who, without lawful justification or reasonable excuse, deals with any property knowing that the property is:
 - (a) property owned or controlled, directly or indirectly, by a designated terrorist entity; or
 - (b) property derived or generated from any property of the kind specified in paragraph (a).
- (2) A person who commits this offence is liable to an imprisonment term not exceeding 10 years.

“16B. Prohibition on making property, or financial or related services, available to designated terrorist entity:

- (1) A person must not make available, or cause to be made available, directly or indirectly, without lawful justification or reasonable excuse, any property or any financial or related services, either to, or for the benefit of, an entity, knowing that the entity is a designated terrorist entity.

- (2) A person who breaches this section commits an offence and is liable to an imprisonment term not exceeding 10 years.”;
 - (h) in section 23(1) -
 - (i) after “who” insert “wilfully and without lawful justification or reasonable excuse,”;
 - (ii) after “funds” insert “intending that they be used, or knowing that they are to be used”;
 - (i) in section 23(2)(b), for “1,000 penalty units” substitute “10,000 penalty units”.
- (3) After section 77 of the Tax Administration Act 2012, insert:

“77A. Offence for tax evasion:

- (1) A person must not evade, or attempt to evade the payment of any tax payable, or act or attempt an act to deliberately cause a default in the payment of any tax payable under any tax law.
- (2) A person who contravenes this section commits an offence and is liable on conviction:
 - (a) if the offender is a person, to a fine not exceeding 100 penalty units and one (1) year imprisonment; or
 - (b) if the offender is a company or other incorporated body, to a fine not exceeding 200 penalty units.”.

- (4) In section 7(1)(i) of the Samoa Institute of Accountants Act 2006, after “professional misconduct,” insert “breaching money laundering and counter terrorism misconduct,”.
- (5) After section 152 of the Crimes Act 2013 insert:

“152A. Money Laundering Offence:

- (1) A person commits the offence of money laundering if the person:
 - (a) engages in a transaction that involves property, knowing or having reason to believe that the property is the proceeds of crime; or
 - (b) acquires, possesses, uses, receives or brings into Samoa property, knowing or having reason to believe that the property is derived directly or indirectly from the proceeds of crime; or
 - (c) converts or transfers property derived directly or indirectly from the proceeds of crime; or
 - (d) converts or transfers property derived directly or indirectly from the proceeds of crime, with the aim of concealing or disguising the illicit origin of that property, or of aiding a person involved in the commission of the offence to evade the legal consequences thereof; or
 - (e) conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property derived directly or indirectly from the proceeds of crime; or
 - (f) renders assistance to any other person for any of the above.

- (2) Knowledge, intent or purpose required as an element of the activities, referred to in subsection (1), may be inferred from objective factual circumstances.
- (3) A person who, without lawful or reasonable excuse, attempts or who aids, abets, counsels or procures the commission of, or who conspires to commit, the offence of money laundering, is guilty of an offence.
- (4) A person may be convicted of a money laundering offence under this section notwithstanding the absence of a conviction in respect of the crime which generated the proceeds alleged to have been laundered.

152B. Offence committed by a body of persons:

If an offence under section 152A is committed by a body of persons, whether corporate or unincorporated, a person, who at the time of the commission of the offence, acted in an official capacity for or on behalf of such body of persons, whether as a director, manager, secretary or other similar officer, or was purporting to act in such capacity, shall be guilty of that offence unless the person adduces evidence to show that the offence was committed without the person's knowledge, consent or connivance.

152C. Money Laundering Penalties:

- (1) A person that is found guilty of an offence under section 152A is liable on conviction to a fine not exceeding 1,000 penalty units, or to imprisonment for a period not exceeding 15 years, or to both.

- (2) A body of persons, whether corporate or unincorporated that is found guilty of an offence under section 152A is liable on conviction to a fine not exceeding 10,000 penalty units.”.
