



SAMOA

FINANCIAL INSTITUTIONS ACT 1996

Arrangement of Provisions

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PART III
CENTRAL BANK
OF SAMOA

the Monetary Board of Samoa
 Act 1974
 Schedule.

31. Amendments to the Central
 Bank of Samoa Act 1984 and

THE FINANCIAL INSTITUTIONS ACT 1996
1996

No.3

AN ACT to provide for the licensing and supervision of financial institutions in Samoa, and matters connected therewith and incidental thereto and to amend relevant provisions of the Central Bank of Samoa Act 1984.

GIVEN the importance of financial institutions in the economic welfare and development of Samoa, the Central Bank has been accorded a statutory role which provides for their licensing and supervision under the Central Bank of Samoa Act 1984 with the objective of maintaining the health and stability of the financial system. The Financial Institutions Act 1996 provides the legislative foundation to enable the Central Bank to carry out that role more effectively, and includes licensing powers formerly embodied in Part VII of the Monetary Board of Samoa Act 1974.

THE ultimate responsibility for the affairs and performance of the financial institution operating in Samoa resides solely with the boards of directors and management of those institutions. The Central Bank can neither guarantee their soundness nor can it provide complete protection for their depositors, creditors and others with claims on them. However, by ensuring that financial institutions follow prudent management practices, the Central Bank can promote public confidence in these institutions and help to maintain a sound financial system.

(8th March 1996)

(Commencement date: 9th March 1996)

PART I
PRELIMINARY

1. Short title and commencement - (1) This Act may be cited as the Financial Institutions Act 1996.

(2) This Act shall come into force on the day after the date upon which the Head of State gives assent to the Act.

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

"Accounting and internal control systems" include procedures and practices applicable to electronic data processing (hereinafter referred to as "EDP").

"Accounts", "books", "vouchers", "minutes", "documents" or "records" include those kept in a computer, magnetic tape or any other storage device used in electronic data processing by the financial institution or by any EDP servicer of a financial institution.

"Affiliate" means a company wherein another company's share holding is at least twenty percent (20%) but not more than fifty percent (50%) of the outstanding voting stock and where that other company has the power to exercise influence over the policies of management of the company.

"Authorised person" means any person authorised by the Chief Executive (whether or not employed with the Bank) to apply for and execute a warrant under section 27.

"Bank" bears the meaning given to it by the Central Bank of Samoa Act 1984.

"Bank" or "Central Bank" means the Central Bank of Samoa established under the Central Bank of Samoa Act 1984.

"Banking Business" bears the meaning given to it by the Central Bank of Samoa Act 1984.

"Board" means the Board of Governors of the Central Bank of Samoa.

"Body Corporate" bears the meaning given to it by the Central Bank of Samoa Act 1984.

"Court" means the Supreme Court of Samoa.

"Credit Institution" bears the meaning given to it by the Central Bank of Samoa Act 1984:

"Director" is an individual who exercises management and policy making functions at the highest level of an organisation and occupies the position of director by whatever name called, and includes a person who is a member of the board of directors,

committee, council or other governing body, howsoever called, of a body corporate.

"EDP servicer" refers to any person providing or maintaining electronic data processing service to a financial institution and includes an EDP division within the financial institution, and an EDP division within a subsidiary or affiliate of the financial institution, or an independent EDP service bureau.

"Financial Institution" bears the meaning given to it by the Central Bank of Samoa Act 1984.

"Financial services" means any service that consists of providing a financial product and includes but is not limited to securities, credit, credit contracts, future contracts, foreign exchange contracts, insurance, superannuation, investments, investment advice, control of investments and management of investments:

"Foreign Financial Institution" means a financial institution incorporated outside Samoa and recognised as such under the laws of its home country.

"Government" means the Government of Samoa.

"Licensed Financial Institution" means a financial institution licensed under the provisions of this Act.

"Minister" means the Minister of Finance.

"Non-Bank Person or Institution" means any person or body (whether incorporated or unincorporated) which provides financial services to the public and which is included in the Second Schedule.

"Person" includes a body corporate.

"Subsidiary" means a company in which another company owns more than fifty percent (50%) of the outstanding voting stock.

"Voting Stock" means any stock, share or other entitlement which carries with it the right for the holder thereof whether personally or through a nominee to vote at any general meeting of the institution in respect of which it has been issued.

PART II **FINANCIAL INSTITUTIONS**

Licensing and Prudential Supervision of Financial Institutions

3. Central Bank to be responsible for the licensing and prudential supervision of financial institutions - The Central Bank in accordance with this Act may issue licenses to financial institutions and shall undertake prudential supervision of licensed financial institutions. In exercising these responsibilities the Central Bank may issue in writing prudential statements and guidelines in connection with the implementation of provisions of this Act, including requirements for licensing, ownership and management of financial institutions. Non compliance by a licensed financial institution with such prudential statements and guidelines may lead the Central Bank to conclude that it is following unsound or unsafe practices in terms of section 13.

4. Unlicensed financial institutions prohibited - (1) No person shall do banking business in Samoa unless it is a financial institution licensed under this Act.

(2) A person commits an offence under this Act, who not being licensed as a financial institution:

- (a) Carries on banking business, whether on his or her own account, in partnership or otherwise; or
- (b) Purports to be licensed or otherwise entitled to carry on banking business; or
- (c) Takes or uses any name, title or description implying or likely to lead the public to believe that he or she is licensed or otherwise entitled to carry on banking business; or
- (d) Makes any representation to be a financial institution on any letterhead, notice, or advertisement or in any other manner.

(3) Where the Bank has reason to believe that any person is contravening the provisions of subsection (1):

- (a) It may cause an examination of the books, accounts and records of such person to find out if that is the case; and
- (b) The Chief Executive or any authorised person named in a warrant issued under section 27 may enter the premises of such

person at any time and cause a search and examination of the premises, books, accounts and records of such person,-

any such person commits an offence if he or she should refuse to make available for examination such books, accounts and records requested by the Bank, or the Chief Executive or authorised person named in a warrant issued under section 27.

(4) A person holding funds which he or she has obtained in contravention of subsection (1) shall repay such funds as directed by the Bank.

(5) Any person who is convicted of an offence under this section shall be liable to a fine not exceeding 50 penalty units or to imprisonment not exceeding two (2) years or to both such fine and imprisonment.

(6) Subsection (1) shall not apply to co-operative societies registered under the Co-operative Societies Ordinance 1952, and credit unions registered under the Credit Union Ordinance 1960.

5. Existing financial institutions deemed licensed - (1) Notwithstanding the provisions of any other Act or Law, the financial institutions specified in the First Schedule shall:

- (a) Be deemed to be licensed under section 6 on the coming into force of this Act;
- (b) Be issued a licence accordingly; and
- (c) Be subject to this Act.

(2) The financial institutions specified in the First Schedule shall comply with the provisions of this Act within 6 months of the coming into force of this Act.

6. Licensing of financial institutions - (1) Any person desirous of commencing banking business in Samoa after the commencement of this Act shall, before commencing such business, apply for and obtain a licence to do so.

(2) An application for a licence under this section shall be made in writing to the Bank in such form as shall be specified by the Bank and shall be accompanied by such fee as may be specified.

(3) Every person who makes an application under this section shall furnish to the Bank such information, and such documents, authenticated in such manner as the Bank may require and specify, to assist the Bank in considering the application. The Bank may conduct such investigations as it deems necessary in regard to such application.

(4) Any person who knowingly furnishes any information or document which is false or misleading in any material particular in connection with an application under this Act is guilty of an offence and is liable on conviction to a fine not exceeding 40 penalty units.

(5) In considering an application, the Bank shall have regard to the economic advantage of Samoa, the need for and the viability of the financial institution proposed, its ownership spread, the financial capacity, history and qualifications of the applicant, promoters, substantial shareholders and management, their character and experience, the proposed financial institution's accounting and internal control systems, the adequacy and the structure of its capital and the business activities it intends to undertake.

(6) In any case where the applicant is a foreign financial institution, the Bank shall have regard to:

- (a) The institution's international reputation;
- (b) The ownership spread of the institution or of its holding company;
- (c) The relevant law and regulatory requirements relating to the licensing and supervision of financial institutions in its country of incorporation; and shall require:
 - (i) Written confirmation from the supervisory authority in the applicant's country of incorporation that the

supervisory authority has no objection to the proposal to carry on banking business in Samoa;

- (ii) Written confirmation that the applicant will provide support as necessary to its branch, subsidiary or affiliate in Samoa;
- (iii) Details of the program of training the applicant will adopt in order to place Samoa citizens in management positions in its operations in Samoa.

(7) Within four (4) months after receipt of an application under this section and all other relevant information and documents, the Bank shall, by resolution of the Board:

- (a) Issue to the applicant a licence to carry on banking business subject to such terms and conditions as may be specified in the licence; or
- (b) Inform the applicant that its application is refused.

(8) No person other than a body corporate shall be granted a licence to do banking business under this Act.

(9) A licence issued under this Act cannot be assigned or transferred and any purported transfer or assignment shall be null and void.

(10) The Bank may, by resolution of the Board, impose new or additional conditions on a licence issued pursuant to this Act, or vary or remove any conditions already imposed. Before taking such action, the Bank shall, by notice in writing to the licensed financial institution concerned, inform it of the changes proposed and afford it an opportunity to make submissions in writing to the Bank in this regard no later than 14 days from the date of the notice. The Bank shall take into account any such submissions received in deciding whether or not to proceed with the changes.

(11) A licensed financial institution shall pay to the Bank the prescribed annual fee upon the granting of a licence and not later than the 15th day of January of every succeeding year. The annual fee shall

be considered as a debt due to the Bank and any licensed financial institution which fails to pay the fee by the due date shall be liable to a surcharge equivalent to one hundred percent (100%) of the prescribed fee.

(12) A financial institution licensed under this Act shall not be required to obtain a business licence under the Business Licences Ordinance 1960.

7. Revocation of licence - (1) The Central Bank may by resolution of the Board revoke a licence issued under section 6:

- (a) If the licensee:
 - (i) Requests revocation of the licence;
 - (ii) Was licensed on the basis of materially false or misleading information or documents;
 - (iii) Fails to commence business within the time period prescribed by the Bank;
 - (iv) Ceases to carry on business in Samoa;
 - (v) Contravenes the terms and conditions of its licence or the provisions of this Act; or
 - (vi) Is subject to voluntary or involuntary winding up proceedings or has a receiver appointed;
- (b) In the circumstances specified in section 14.

(2) Where the Bank intends to revoke the licence in any of the circumstances specified under subsection (1)(a), the Bank shall give the licensee notice in writing of that intention and shall afford the licensee the opportunity to submit to the Bank, within 14 days of the date of the notice, reasons why the licence should not be revoked. The Bank shall take into account any such submissions in deciding whether or not to proceed with the revocation.

(3) The revocation of a licence in the circumstances specified in subsection (1)(a)(ii) shall not prejudice any other action which may be initiated under section 6 (4).

8. Minimum capital of a financial institution - (1) Every financial institution licensed under this Act shall maintain:

- (a) If incorporated in Samoa, paid up capital and unimpaired reserves; and
- (b) If incorporated abroad assigned capital; in such minimum proportion in relation to its assets, liabilities or risk exposures, and in such amount, as the Central Bank may in its absolute discretion specify from time to time.

(2) The Central Bank may in its absolute discretion specify the minimum amount of paid up or assigned capital required by a financial institution for the issue of a licence under section 6.

(3) The Central Bank may in its absolute discretion specify different requirements for different financial institutions or classes of financial institutions.

(4) The minimum amount of paid up capital or assigned capital required under subsection (2) is:

- (a) In the case of a credit institution, not less than \$1,000,000;
- (b) In the case of a bank, not less than \$2,000,000.

(5) The computation and form of the capital required to be held under subsections (1) and (2) shall be determined by the Central Bank after consultation with the financial institution concerned.

(6) No licensed financial institution shall declare or pay any dividend or make any other transfer from profits or reserves if this would contravene the provisions of this section or any specification made thereunder.

9. Prudential supervision - (1) In the prudential supervision of licensed financial institutions and in determining whether or not a licensed financial institution carries on its business in a prudent manner, the Central Bank will have regard to the following:

- (a) Capital adequacy in relation to the size and nature of the business;
- (b) Asset concentration and risk exposure;
- (c) Separation of banking business from other business and from other interests of any person owning or controlling the licensed financial institution;
- (d) Adequacy of liquidity in relation to liabilities;
- (e) Asset quality and adequacy of provisions for losses;
- (f) Internal Controls and accounting systems; and
- (g) Such other matters as the Central Bank considers relevant.

(2) The Central Bank may require a licensed financial institution to submit within a prescribed time and in a prescribed form such periodic returns and other information as it finds necessary for the purpose of this Act.

(3) The Central Bank may require the licensed financial institution to submit a certificate from its external auditor verifying the accuracy of any return or information furnished under subsection (2).

(4) The Central Bank may in its absolute discretion impose upon any licensed financial institution and upon any director or officer of that institution administrative fines for:

- (a) Failure to submit or for wilfully delaying the submission of any required return or information, or for wilfully submitting any false or inaccurate return or information required under subsection (2); or

- (b) Failure to submit the certificate of the external auditor, if required in accordance with subsection (3).
- (c) Failure to comply with a directive issued under section 13.

(5):

- (a) The administrative fines shall be in amounts as may be determined by the Central Bank to be appropriate but in no case may exceed 20 penalty units for each violation or where the violation is a continuing one, may not exceed 2 penalty units for every day during which the violation continues, and shall take into consideration the surrounding circumstances, such as the nature and gravity of the violation. The administrative fines imposed shall be a civil debt and if not paid may be enforced by action in the Court;
- (b) A licensed financial institution or any director or officer of that institution on whom an administrative fine is imposed may, within 14 days of the date of the notification of such fine, submit reasons to the Board why such fine should not be imposed. After consideration of such submission the Board may confirm, vary or rescind the fine.

10. External auditor and annual accounts - (1) Every licensed financial institution incorporated in Samoa shall appoint annually an external auditor. The external auditor must hold a current certificate of public practice issued under the provisions of the Public Accountants Act 1984 and must be acceptable to the Bank.

(2) In carrying out an audit of the accounts of a licensed financial institution, it shall be the duty of the external auditor where necessary to enlarge or extend the scope of his or her audit of the business and affairs of the institution and to carry out any other examination or establish any procedure, so as to give a true and fair view of the institution's financial condition and results of its operations. Any special procedure undertaken should be disclosed in the auditor's report.

(3) Every licensed financial institution shall, within three months after the close of its financial year or such further period as the Bank may approve, submit to the Bank a copy of its audited annual balance sheet and profit and loss statement together with any notes thereon and a copy of the report of the external auditor. If a licensed financial institution is unable to do this within the prescribed period, the Bank may require that institution to submit the external auditor's preliminary conclusions or a draft report within the prescribed period. However, this will not exempt the institution from submitting to the Bank a copy of the final audited balance sheet and profit and loss statement with notes thereon and the final report of the external auditor upon their completion.

(4) Not later than 4 months after the end of each financial year of each licensed financial institution, or such further period as the Bank may approve, it shall publish in the Savali or such other newspaper circulating in Samoa as the Bank may direct, a copy of its audited balance sheet and profit and loss account.

(5):

- (a) It shall be the duty of the external auditor to report immediately to the Bank information relating to the affairs of a licensed financial institution obtained in the course of an audit, if he or she is of the opinion that;
- (i) The financial institution is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations or is in serious financial difficulties.
 - (ii) A criminal offence involving fraud or dishonesty has been committed;
 - (iii) Serious irregularities have occurred, including irregularities that jeopardise the interest of depositors and creditors;
 - (iv) Losses have been incurred which substantially reduce the capital funds of the financial institution; or

- (v) He or she is unable to confirm that the claims of creditors are still covered by the financial institution's assets;
- (b) The external auditor may be required to discuss the audit directly with the Bank or be asked to provide additional information regarding the audit.

(6) The external auditor shall, before disclosing any information to the Bank under subsection (5), take reasonable steps to inform the licensed financial institution of the intention to disclose the information and the nature of such information; and of the intention to discuss the audit with the Bank.

(7) The Bank may, by notice in writing to a licensed financial institution, require it to supply the Bank with a report, prepared by its external auditor on such matters as the Bank may determine which may include an opinion on asset quality, adequacy of provisions for losses, and the adequacy of the accounting and control systems.

(8) No civil, criminal or disciplinary proceedings shall lie against any auditor arising from the disclosure in good faith of information to the Bank pursuant to this section.

11. On-site examination - (1) The Central Bank may, under conditions of confidentiality, initiate on-site examinations of the accounts and affairs of any licensed financial institution and any of its branches, agencies or offices by Central Bank officers or by other persons designated as examiners by the Central Bank.

(2) A licensed financial institution under examination shall make available for the inspection of examiners designated by the Central Bank all cash and securities of the institution and all accounts, books, vouchers, minutes and any document or record that are relevant to its business and shall supply all information concerning that business as may be required, within the time specified by the examiners.

(3) The Central Bank officers or designated examiners may make copies of and take away for further scrutiny, any papers or electronically stored data they require.

(4) An on-site examination may extend to any of the subsidiaries and affiliates of a licensed financial institution. Accordingly, the provisions of subsections (2) and (3) shall apply in the conduct of any examination of that institution's subsidiary or affiliate.

12. Restrictions on lending and other activities - (1) A licensed financial institution shall not in Samoa:

- (a) Grant to any person, or group of persons which group is under the control or influence of one and the same person any risk exposures which are in total at any time more than 25 percent of the total capital of the licensed financial institution as determined by the Central Bank from the prudential statements unless:
 - (i) The transactions are between banks, or branches of a bank, or relate to purchases of telegraphic transfers or bills of exchange payable outside Samoa.
 - (ii) The transactions are granted to, or guaranteed by, the Government of Samoa or such foreign government as the Central Bank may specify:
- (b) Lend against the security of its own shares;
- (c) Grant to any of its directors any advance, credit facility or guarantee unless granted on substantially the same terms, including interest rates and security, as those prevailing at the time for comparable transactions by the financial institution with members of the general public;
- (d) Deal in the buying, selling or bartering of goods except in connection with the realisation of security given to or held by it, or engage in trade;
- (e) Own to an aggregate value exceeding 10 percent of the sum of its paid up capital and unimpaired reserves, the share capital of or other ownership interest in any commercial, agricultural, industrial or other undertaking except:

- (i) Those formed to undertake nominee, executor or trustee functions for the account of customers, if approved in writing by the Central Bank; and
- (ii) In connection with the realisation of security given to or held by it and any such ownership interest shall be disposed of at the earliest suitable opportunity.

(2) Any financial institution specified in the Schedule which is in contravention of subsection (1) shall rectify such contravention within 18 months of the coming into force of this Act, or such further period as the Bank may allow.

13. Unsound or unsafe practices - Where the Bank is of the opinion, either as a result of an inspection carried out pursuant to section 11 or otherwise, that a licensed financial institution:

- (a) Is following unsound or unsafe practices in the conduct of its business that is likely to jeopardise its obligations to its depositors or other creditors, or adversely affect the operation or stability of the financial system; or
- (b) Has contravened or failed to comply with the terms and conditions of its licence or the provisions of this Act, the Bank may issue a directive to such licensed financial institution to:
 - (i) Cease and desist from such practice, contravention or non-compliance; and
 - (ii) Take such action as may be specified in the directive to correct the conditions resulting from such practice, contravention or noncompliance.

14. Enforcement - (1) Where:

- (a) A licensed financial institution informs the Central Bank that it is insolvent, is likely to become so, or is likely to be unable to pay its obligations; or

- (b) If in the opinion of the Central Bank, or if an external audit or an on site examination shows that, a licensed financial institution:
 - (i) Is carrying on its business in a manner that is detrimental to the interests of its depositors, creditors or the public; or
 - (ii) Is likely to be unable to meet its obligations when they fall due the Central Bank shall, by resolution of the Board, exercise one or more of the powers specified in subsection (2).

(2) The powers referred to in subsection (1) are:

- (a) To direct the licensed financial institution to take whatever action in relation to its business as the Central Bank may specify.
- (b) To appoint a qualified person to advise the licensed financial institution on the proper conduct of its business.
- (c) To direct the licensed financial institution to pay such remuneration to a person appointed under paragraph (b) of this subsection, as may be fixed by the Central Bank.
- (d) To revoke the licensed financial institution's licence.
- (e) To present a petition to the Court for the winding up of the licensed financial institution.

(3) Where an advisor is appointed under subsection (2)(b) the licensed financial institution shall afford the advisor access to its books, accounts and documents and shall give such information and facilities as necessary to enable him or her to carry out his or her duties.

15. Court supervised management - (1) If the Central Bank considers that it is proper to take control of and manage the banking business of a licensed financial institution in order to protect the stability of the financial system, the interest of depositors or in the public interest, it may apply to the Court for any order under this section.

(2) The Court may, if it considers that in the circumstances of the case it is appropriate that the Central Bank or its nominee be appointed to take control of and manage the banking business of a licensed financial institution, make any or all of the following orders:

- (a) That the Central Bank, or a person nominated by the Central Bank and approved by the Court, be appointed as Court Appointed Manager, to take control of the banking business of a licensed financial institution;
- (b) That the Court Appointed Manager shall have such powers and authority as the Court specifies, including the following:
 - (i) Power to carry on or cease to carry on, or sell the business of the financial institution and in so doing, to have and exercise all the powers, rights and authorities necessary so to do;
 - (ii) Such of the powers of a liquidator under the Companies Act as are specified by the Court;
- (c) That any subsidiary of the licensed financial institution be subject to control and management under this section in like manner to the licensed financial institution.
- (d) Any order in relation to the licensed financial institution that the Court would be able to make in relation to a company that is in liquidation under the Companies Act, including:
 - (i) A moratorium on actions or enforcement action against the licensed financial institution on such terms as the Court considers appropriate;
 - (ii) A prohibition against the removal or disposal of assets except with the consent of the Court Appointed Manager;
- (e) That the Court Appointed Manager be entitled to apply to the Court in the case to seek directions.

(3) If a licensed financial institution that is subject to management and control under this section is incorporated outside Samoa, this section applies to the operations of the licensed financial institution in Samoa and to its property, rights, assets and liabilities relating to its business in Samoa.

(4) If a licensed financial institution or subsidiary that becomes subject to management and control under this section is already in liquidation or receivership:

- (a) The liquidation or receivership shall cease; and
- (b) The person appointed as liquidator or receiver shall be discharged:

PROVIDED THAT if the control and management of the licensed financial institution or subsidiary under this section is terminated, the Court may order that the liquidation or receivership shall be revived, upon such terms as the Court may specify.

(5) The Court, on the application of the Central Bank or of its own motion, may terminate the appointment of a person as Court Appointed Manager, for any reason, including the resignation of that person.

(6) A licensed financial institution or subsidiary shall cease to be subject to control and management under this section if:

- (a) The Court, on the application of the Central Bank, so orders;
- (b) The Central Bank presents a petition for the winding up of the licensed financial institution.

(7) In the exercise of its powers, the Court Appointed Manager shall have regard to:

- (a) The need to avoid significant damage to the financial system;

- (b) The preservation, subject to paragraph (a), of the position of creditors and the maintenance of the ranking of claims of creditors.

(8) A Court Appointed Manager shall comply with any written directions of the Central Bank relating to the exercise of his or her powers under this Act unless:

- (a) Such directions conflict with any order of the Court; or
- (b) The Central Bank is the Court Appointed Manager.

(9) A Court Appointed Manager, and any employee, director or assistant thereof, shall not incur any personal liability by virtue of the exercise, in good faith, of any power or duty under this Act.

(10) An application to the Court under subsection (1) shall be by notice of motion and thereafter the form of the proceedings shall be as directed by the Court.

16. Misleading or obstructive conduct an offence - Any director, officer, employee, former officer or former employee of a licensed financial institution or of the EDP Servicer of that licensed financial institution, who:

- (a) With intent to deceive:
 - (i) Makes a false or misleading entry in any book or record;
 - (ii) Makes or provides any false or misleading statement, report, return, document or information;
 - (iii) Omits an entry or alters or conceals an entry in any book or record;
 - (iv) Conceals or destroys any information, book, voucher, record, report, return, minutes or document, relating to the accounts, transactions, affairs or business of the financial institution; or

- (b) Obstructs or endeavors to obstruct:
 - (i) The proper performance by an external auditor of his or her duties;
 - (ii) An on-site examination of the licensed financial institution (or any branch, agency, office, subsidiary or affiliate of that institution) by an examiner appointed by the Central Bank; or
 - (iii) The proper performance by an advisor or court appointed manager of his or her duties,-

commits an offence and shall be liable on conviction to a fine not exceeding 40 penalty units or to imprisonment for a term not exceeding 1 year or to both such fine and imprisonment.

MISCELLANEOUS PROVISIONS

17. Notice of changes - (1) When any alteration is made in the Memorandum or Articles of Association of a licensed financial institution or in any other instrument whereunder that institution was incorporated, the institution shall forthwith give to the Central Bank full particulars, in writing, of such alteration, verified by a statutory declaration made by a director of the institution.

(2) In respect of any application made to the Court under section 205 of the Companies Act proposing a compromise or arrangement that involves a licensed financial institution, the Central Bank shall:

- (a) Be served with a notice of every meeting ordered by the Court and also a statement explaining the effect of the compromise or arrangement as provided under sections 205 and 206 of the Companies Act; and
- (b) Be eligible to attend and be considered competent to participate and to give advice in any meeting of which such notice is given.

(3) Any licensed financial institution which acts in contravention of this section commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

18. Transfer of control - (1) Any event specified in subsection (2) that will result in a transfer of control of a licensed financial institution incorporated in Samoa shall be subject to the written approval of the Central Bank before implementation.

(2) For the purposes of subsection (1), the following events are specified:

- (a) Any agreed sale, transfer or other disposition whatsoever of a licensed financial institution's share capital or issue or allotment of any new share capital;
- (b) Any proposed compromise or arrangement that involves a licensed financial institution for which an application has been made to the Court pursuant to the provisions of sections 205 and 207 of the Companies Act and where the proposed compromise or arrangement is for the purposes of or in connection with a scheme for the reconstruction or amalgamation of that institution;
- (c) Any other event or scheme the effect of which transfers, directly or indirectly, the ownership or the powers exercisable over the voting stock of a licensed financial institution.

(3) For the purpose of this section, "transfer of control" refers to any event specified in subsection (2) that results in a person acquiring ownership or exercising power over twenty percent (20%) or more of the voting stock of a licensed financial institution.

(4) No licensed financial institution incorporated in Samoa shall affect a reduction of its share capital without prior notice to the Central Bank.

(5) Any licensed financial institution or any person who acts in contravention of this section commits an offence and is liable on

conviction to a fine not exceeding 30 penalty units and any purported transfer may be declared null and void.

19. Use of the word "bank" and name restriction - (1)

Every licensed bank shall use as part of its name, description or title the word "bank" or one or more of its derivatives.

(2) Apart from an institution established under its own Act with the word "bank" (or its derivative) in its title, and in the circumstances described in subsection (3), only a bank licensed under this Act shall use the word "bank" or any of its derivatives in any language, or use any other word that indicates that the person may be undertaking the business of a bank, in the name, description or title under which the person is doing business in Samoa.

(3) Notwithstanding subsection (2) of this section the Central Bank may approve the use of the word "bank" where that word is included in the name of a foreign financial institution which is permitted by the Central Bank to establish a representative office in Samoa.

(4) No bank shall be granted or continue to hold a licence under a name which so closely resembles the name of an existing bank that it is likely, in the opinion of the Central Bank, to mislead the public.

(5) No licensed financial institution shall change its name or use a name other than that under which it was licensed, unless the written consent of the Central Bank is obtained.

(6) Nothing in this section shall apply to an association of banks or bank employees, formed for the protection of their common interests.

20. Places and hours of business - (1) A licensed financial institution may, with prior written notice to the Central Bank, open additional places of business, whether branches or other offices.

(2) A licensed financial institution shall notify the Central Bank in writing of the days and hours of business of its principal office and each of its branches or offices in Samoa and shall post conspicuously in each office its days and hours of business. A licensed financial institution may, following written notice to the Central Bank, adopt

flexible days and hours of business in certain places if circumstances so require. A licensed financial institution shall not, without prior written notice to the Central Bank, transfer or close any place of business or change its business hours.

(3) A licensed financial institution shall remain open for business with the public on all days, and during the hours, notified to the Central Bank under subsection (2), except on days declared under section 21.

(4) A licensed financial institution incorporated in Samoa shall not, without the approval in writing of the Central Bank, operate a branch office or subsidiary outside Samoa.

21. Declaration of Closure days for Financial Institutions - (1) The Central Bank may, if the public interest so requires (and with appropriate public notification) declare any day or days upon which any or all financial institutions shall be closed for business whether or not such days are also public holidays.

(2) Any day declared to be a closure day under this section shall not necessarily be a public holiday, except for the purposes of the Bills of Exchange Act, and nothing in this section shall be deemed to affect the provisions of any law relating to public holidays.

(3) A licensed financial institution which contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding 20 penalty units and where the offence is a continuing one, to a fine not exceeding 2 penalty units for every day during which the offence continues.

22. Retention of cheques, etc., for 7 years - (1) All cheques and bank drafts in the possession of the licensed financial institution on which they are drawn and all bills of exchange or promissory notes in the possession of a licensed financial institution and made payable at that institution shall be retained by that institution until the expiration of the period of 7 years from the date thereof in the case of documents payable on demand or from the due date thereof in the case of all other documents.

(2) This section shall apply to cheques, drafts, bills and notes received by a financial institution either before or after the coming into force of this Act.

(3) No document to which this section refers shall be destroyed under the implied authority thereof at any time after a demand for the delivery of the document has been made to the licensed financial institution by the person entitled thereto.

(4) It shall be sufficient compliance with the duty to retain imposed by subsection (1) if a copy of the document has been made by the financial institution on microfilm, microfiche, tape, disc, or electronic or photographic storage media, and is retained by the licensed financial institution for the same period as that document is required to be retained pursuant to subsection (1).

(5) Notwithstanding subsection (4), no document shall be destroyed under the authority thereof at any time within 2 years after the date thereof in the case of documents payable on demand or from the due date thereof in the case of all other documents.

(6) Notwithstanding the provisions of any other Act or Law, a copy of a document made pursuant to this section shall be admissible as evidence in any legal proceedings to the same extent as the document of which it is a copy would have been admissible.

FINAL PROVISIONS

23. Non-compliance with the Act an offence - (1) Any director or officer concerned in the management of any licensed financial institution who:

- (a) Fails to comply with the requirements of this Act or any of the regulations, notices or directives issued under this Act; or
- (b) Aids or abets or counsels or procures any person to commit an offence under this Act, commits an offence and shall be liable on conviction to a fine not exceeding 40 penalty units or to imprisonment for not more than 1 year or to both such fine and imprisonment.

(2) Any person who commits an offence or any individual responsible for any offence against this Act or any of the regulations notices or directives issued under this Act for which no penalty is expressly provided in this Act is liable upon conviction to a fine not exceeding 40 penalty units or to imprisonment not exceeding 1 year or to both and if the offence is a continuing one, to a further fine not exceeding 4 penalty units for every day during which the offence continues.

24. Prohibition on disclosure - (1) Any statement or return or information provided by a licensed financial institution or obtained from a licensed financial institution by an examiner, advisor or Court Appointed Manager shall be regarded as confidential. The Central Bank and any of its directors, officers, employees or any individual or person designated by the Central Bank under the provisions of this Act shall not disclose any information relevant to the affairs or condition of any licensed financial institution or any of its clients acquired in the performance of his or her duties except where disclosure is required for the purpose of performing his or her duties, or is lawfully required by any Court or by specific provisions of this Act or other Act or Law:

PROVIDED THAT disclosure is permitted in confidence to a supervisory authority in any other country for the purposes of the exercise of functions corresponding to or similar to those conferred on the Central Bank under this Act.

(2) Any person who contravenes this Section commits an offence and shall be liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

(2A) This section shall apply to any statement or return or information provided by a Non-Bank Person or Institution as if it was a licensed financial institution

25. Indemnity - The Board of Governors, and the Chief Executive of the Central Bank and any officer or person duly appointed or authorised by the Central Bank, shall not incur any liability as a result of anything done in good faith in the exercise of any power or the performance of any duty under this Act.

26. Supreme Court to have jurisdiction - (1) The Supreme Court shall have jurisdiction in any proceedings arising from this Act.

(2) The Attorney-General is empowered to institute proceedings to prevent and restrain any breach of the provisions of this Act and to prosecute offences committed under this Act.

(3) The Supreme Court may, at any time during the course of any proceedings and before giving judgment, make such temporary restraining order or prohibition as it shall deem just under the circumstances.

27. Supreme Court may issue Search Warrants - (1) A Judge of the Supreme Court who is satisfied on the oath of the Chief Executive or authorised person that there is reason to believe that there is in any building, premises or place:

- (a) Any thing upon or in respect of which an offence under section 4 (1) has been or is suspected of having been committed; or
- (b) Any thing which there is ground to believe will be evidence as to the commission of an offence under section 4(1); or
- (c) Any thing which there is ground to believe is intended to be used for the purpose of committing an offence under section 4(1),-

may issue a search warrant, which shall be in the prescribed form (if any).

(2) Every search warrant shall be directed either to the Chief Executive or authorised person and any such warrant shall be executed by the person named in the warrant.

(3) Every search warrant shall authorise the Chief Executive, or authorised person named in the warrant at any time or times within one month from the date thereof to act in one or more of the following ways:

- (a) To enter and search the building, premises or place referred to therein with such assistants as may be necessary;

- (b) To break open and search any box or receptacle therein or thereon;
- (c) To seize any thing referred to in subsection (1) of this section.

(4) Every search warrant shall be executed by day, unless the warrant expressly authorises the execution thereof by night.

(5) It is the duty of every one executing any search warrant to have it with him or her and to produce it if required to do so.

28. Exemption of international companies - The provisions of this Act shall not apply to:

- (a) Any foreign or international company registered or incorporated under the International Companies Act 1987, or any Act replacing that Act;
- (b) Any company registered under the Trustee Companies Act 1987, or any Act replacing that Act but only to the extent that it carries on business in conformity with that Act;
- (c) Any company licensed under the International Banking Act 2005 or any act replacing that Act, but only in respect of those companies that have not commenced domestic banking business, pursuant to approval granted under the said Act;
- (d) Any trust registered under the International Trusts Act 1987, or any Act replacing that Act; and
- (e) Any person registered as an insurance manager under the International Insurance Act 1988 or any Act replacing that Act, but only in respect of "offshore insurance business" within the meaning of that term in that Act.

29. Regulations - The Head of State, acting on the advice of the Cabinet, may issue such regulations as may be necessary or expedient for giving full effect to this Act and for the due administration thereof.

30. Application of the Act - The provisions of any other Act or Ordinance or any legislation that may be inconsistent with the provisions of this Act shall be read subject to or modified by the provisions of this Act. Nothing in this Act shall exempt a licensed financial institution from the provisions of the Companies Act, save that where there is any conflict between the provisions of this Act and the provisions of the Companies Act, this Act shall prevail.

PART II_A

APPLICATION OF PRUDENTIAL SUPERVISION TO NON-BANK PERSONS OR INSTITUTIONS

30A. Extension of prudential supervision to Non-Bank Persons or Institutions-(1) The Central Bank in accordance with this Part of the Act may extend its prudential supervision to non-bank persons or institutions as listed in the Second Schedule.

(2) Any person or institution which provides financial services to the public may by order of the Minister be added to or deleted from the Second Schedule.

(3) The Minister shall consult with the Governor of the Central Bank before making any order under this section.

(4) The prudential supervision which may be imposed by the Central Bank may include but is not limited to the measures provided in Part II of the Act.

(5) Any order made under subsection (2) shall be published in the Savali or the Gazette.

(6) For the purposes of this Part the term “licensed financial institutional” shall include Non-Bank Persons or Institutions.

30B. Enforcement of Prudential Supervision Measures for Non-Bank Persons or Institutions-(1) Any person who –

- (a) Fails to submit or wilfully delays the submission of any required return or information requested by the Central Bank;
- (b) Fails to comply with any prudential supervision measures imposed by the Central Bank in respect of that person or institution;

commits an offence and shall be liable on conviction to a fine not exceeding 40 penalty units or to a term of imprisonment not exceeding one year or to both.

(2) Any person who –

- (a) Makes a false or misleading statement in any document required to be submitted to the Central Bank;
- (b) Omits an entry or alters, conceals or destroys an entry in any document required to be submitted to the Central Bank;
- (c) Wilfully obstructs any officer of the Central Bank engaged in his or her duties in respect of prudential supervision of the person or institution;

commits an offence and shall be liable on conviction to a fine not exceeding 40 penalty units or to a term of imprisonment not exceeding one year or to both.

PART III CENTRAL BANK OF SAMOA

31. Amendments to the Central Bank of Samoa Act 1984 and the Monetary Board of Samoa Act 1974 - (1) Section 2 of the Central Bank of Samoa Act 1984 is amended by adding the following terms and their definitions into their correct alphabetical place under section 2:

"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 a corporation established in Samoa or elsewhere under any Act.

"**Person**" includes a body corporate.

(2) The Central Bank of Samoa Act is further amended by adding a new section 17A specified below immediately after section 17:

"17A. Indemnity - The Board of Governors, the Chief Executive and any officer or employee of the Central Bank shall not incur any liability as a result of anything done in good faith in the exercise of any power or the performance of any duty under this Act."

(3) Section 35 of the Central Bank of Samoa Act is hereby amended by omitting the first part of paragraph (b) of subsection (1) and inserting the following:

"(b) The permissible purposes, aggregate ceilings, maximum amounts beyond which the approval of the Bank is necessary, the maximum maturities, and maximum and minimum rates of interest and the method of computation thereof chargeable in respect of:"

(4) Section 35 is further amended by omitting paragraph (c) of subsection (1) and substituting the following paragraph:

"(c) The manner of disclosure to the public and to:

- (i) Each depositor in a financial institution, of the effective annual interest rate payable and the manner of computation thereof, the nature and amount or basis of computing charges, fees and other payments of whatever sort made by or to the depositor in respect of deposits made therewith:
- (ii) Each person to whom credit is extended, of the terms of obtaining such credit including the effective annual interest rate payable and the manner of computation thereof, the nature,

amount and basis of computing commissions, charges, fees, penalties and other payments of whatever sort made by or to such person in respect of the credit so obtained; and

- (iii) Each person to whom any service such as money transfer, sale of certified cheque or rental of a safe deposit box is rendered, of the amount and basis of computing commissions, charges or fees in respect of such service so obtained.”

(5) Section 47 of the Central Bank of Samoa Act is further amended by adding a new subsection (5) specified below immediately after subsection (4).

"(5) In its accounts, the Bank shall not be required to include the face value of coin issued by the Minister and the Bank."

(6) The Monetary Board of Samoa Act 1974 is hereby amended by repealing Part VII of that Act.

FIRST SCHEDULE

The Bank of Samoa, established under the Bank of Samoa Ordinance 1959
Pacific Commercial Bank Limited
National Bank of Samoa Limited.

SECOND SCHEDULE

REVISION NOTES 2008

This law has been generally edited as provided for by section 5 of the *Revision and Publication of Laws Act 2008*. The following general revisions have been made –

- (a) References to Western Samoa have been amended to Samoa in accordance with an amendment to the Constitution of Samoa in 1997.
- (b) The fines have been amended and are stated as penalty units as provided for by the *Fines (Review and Amendment) Act 1998*.
- (c) All references to the male gender have been made gender neutral.
- (d) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (e) Other minor editing has been done in accordance with the lawful powers of the Attorney General.

The following amendments have been made to specific sections of the Act to incorporate amendments made by Act of Parliament passed since the publication of the *Western Samoa Statutes Reprint 1978-1996* –

Section 2 This section was amended by inserting the definitions “Financial Services” and “Non-Bank Person or Institution”; this was amended by the *Financial Institutions Amendment Act 2001*.

Section 5 The word “First” is added to subsection (1) before the word “Schedule” and by adding the word “First” in subsection (2) before the word “Schedule”. The *Financial Institutions Amendment Act 2001* amended this section by adding the word “First” to subsection (1) (a) before the word “Schedule” however, the word “Schedule” is only found in subsection (1) and has therefore been amended accordingly and not strictly as it is stipulated in the *Financial Institutions Amendment Act 2001*.

Section 12 The words “any advance, credit facility or guarantee which in total is at any time more than 25 percent of the sum of the issued capital and published reserves of the licensed financial institution unless” in subsection (1) (a) were deleted and substituted with “any risk exposures which are in total at any time more than 25

percent of the total capital of the licensed financial institution as determined by the Central Bank from the prudential statements unless”. This was amended by the *Financial Institutions Amendment Act 2001*.

Section 24 A new subsection (2A) was inserted. This was amended by the *Financial Institutions Amendment Act 2001*.

Section 28 Paragraph (c) was amended by deleting it’s old provision and substituting with it’s current form. This was amended by the *International Banking Act 2005*.

PART II A new PART IIA with sections 30A and 30 were inserted. This was amended by the *Financial Institutions Amendment Act 2001*.

Schedule This is amended by inserting the word “First” before the word “Schedule” and by inserting a Second Schedule. This was amended by the *Financial Institutions Amendment Act 2001*.

References made to the *Companies Act 1955* will be amended upon the coming into force of the *Companies Act 2001*.

This law has been consolidated and revised by the Attorney General under the authority of the *Revision and Publication of Laws Act 2008* and is an official version of this Act as at 31 December 2007. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.



Aumua Ming Leung Wai
Attorney General of Samoa

Revised and consolidated by Noumea Loretta Afamasaga
Under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo
(Parliamentary Counsel)

REVISION NOTES 2008 No. 2

This law has been generally edited as provided for by section 5 of the *Revision and Publication of Laws Act 2008*. The commencement date has been inserted after the assent date under the general powers of the Attorney General. No amendment has been made to this law since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

This law has been consolidated and revised by the Attorney General under the authority of the *Revision and Publication of Laws Act 2008* and is an official version of this Act as at 31 December 2008. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.



Aumua Ming Leung Wai
Attorney General of Samoa

Revised and consolidated by the Legislative Drafting Division under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel)

**The Financial Institutions Act 1996 is
administered in the Ministry of Finance.**